



Education & Skills
Funding Agency

Investigation report:

**Manchester Creative Studio & Collective
Spirit Free School**

May 2019

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Executive summary

1. In February 2017 the Education and Skills Funding Agency (ESFA) received allegations regarding potential financial irregularity and non-compliance with the Academies Financial Handbook (AFH) at Manchester Creative Studio (MCS) and Collective Spirit Free School (CSFS). The allegations related primarily to the behaviours of the CSFS local governing body (LGB) Chair (Mr Mohib Uddin) and invoices received from September 2016 onward from Collective Spirit Community Trust Ltd (CSCT), a provider of various services to the two trusts. The allegations referred specifically to the costs incurred, cost inflation and non-delivery of services. There is a connection between CSCT and the previous Chair of Directors of both trusts (Mr Alun Morgan) who is a 50% shareholder of CSCT. There is also a connection with the former Chief Executive Officer (CEO) of both trusts (Mr Raja Miah).

2. Owing to concerns about MCS and CSFS and the allegations raised, ESFA undertook a visit from 19 to 20 April 2017. Findings from the visit and subsequent work beyond that identified a number of significant failings in both the governance and financial control arrangements, including several breaches of the regulatory framework governing academy trusts. These include:

- failure to manage conflicts of interest resulting in a breach of AFH 3.1.12
- key trustees failed to declare connections with CSCT breaching the AFH 3.1.13
- transactions with a connected party (CSCT) were not adequately managed or sufficiently disclosed in the 2015/16 financial statements resulting in a breach of AFH 3.1.14 and the Academies Accounts Direction
- failure to establish a control framework that recognises public expectations about governance, standards and openness, a breach of AFH 2.3.2
- the board of trustees failed in their duties as company directors as set out in the Companies Act 2006 to:
 - avoid conflicts of interest
 - declare interest in proposed transactions or arrangements
 - exercise reasonable care, skill and diligence
- failure to comply with the financial accountability system for academy trusts, including the relevant areas of HMT's Managing Public Money and the Nolan principles – AFH 1.1.2

3. Since the ESFA visit and alongside ongoing work to resolve outstanding questions and issues, a number of changes have taken place. Oasis Community Learning Trust were brought in to support CSFS from April 2017 and The Laurus Trust were brought in to support MCS from May 2017. Both Laurus and Oasis

provided significant support to each school and assisted ESFA in trying to resolve outstanding matters, particularly in relation to financial management. This proved difficult owing to the poor documentary evidence, processes and procedures their predecessors had in place. Additionally, the CEO of Consilium Academies was appointed Chair of Directors of MCS from 27 June 2017 and CSFS from 12 May 2017 following the resignations of the previous Chair of Directors and the CSFS LGB Chair. Their terminations as directors were both registered on Companies House by 27 June 2017.

4. The lack of any robust financial control system, adequate financial oversight and relevant documentation to support contractual management and financial transactions by the trusts has impacted upon ESFA reaching any conclusion on the validity of funds paid to CSCT. Specifically, owing to the lack of supporting financial information held by the trusts, ESFA was unable to confirm whether the “at cost” policy for CSCT charging arrangements had been complied with, indicating a potential breach of the AFH. ESFA has reviewed other supplier invoices for the same services following the termination of the CSCT contract but owing to a number of changes in the level of service provision required, resulting from falling pupil numbers and other issues, no direct comparable costings could be made. As a result, without the underlying information and invoices to support CSCT’s overall service charge no definite conclusions could be reached with regard to potential charges above cost.

Background

5. MCS was a single academy trust with a local governing body with sub-committees responsible for finance, performance, safeguarding and health and safety. It was a 300 place Studio School Free School which opened on 1 September 2014, with an age range of 14-19 years and a roll of approximately 114 children. MCS closed in June 2018.

6. CSFS opened as a Multi Academy Trust (MAT) on 2 September 2013 and was a single school MAT which also operated with a local governing body. The 300 place academy had an age range of 11 to 16 years and a roll of approximately 243 children. CSFS closed in July 2017.

7. MCS and CSFS were governed by an overarching Board of Directors with the same Chair (Chair of Directors) and also shared the same CEO, worked collaboratively and operated as a loose federation sharing resources and teaching staff.

8. In February 2017 ESFA received allegations about MCS and CSFS. Concerns related primarily to:

- behaviours of the CSFS local governing body (LGB) Chair, specifically signing off invoices for CSCT without evidence of delivery
- invoices received from September 2016 onward from CSCT, specifically the costs incurred, cost inflation and non-delivery of services

9. ESFA agreed that a visit would be required to review the specific invoices and financial transactions referred to in the allegations to clarify concerns. ESFA conducted a visit from 19 to 20 April 2017. The visit included review of both trusts documentation, including financial information and interviews with key staff, specifically the Chair of Directors for MCS and CSFS and the CSFS LGB Chair. Owing to the lack of available evidence on site during the visit, work has been ongoing since that time to obtain relevant documentation and clarify a number of outstanding issues with key individuals.

10. Owing to the financial difficulties and poor educational performance, Department intervention resulted in CSFS commissioning support from Oasis Community Learning Trust from April 2017. Similarly, The Laurus Trust was assisting MCS from May 2017 to improve financial control and educational performance. Following the resignations of the Chair of Directors and the LGB Chair of CSFS, the CEO of Consilium Academies was appointed the new Chair of Directors of CSFS from 12 May 2017 and MCS from 27 June 2017. The Chair of Directors and LGB Chair of CSFS resigned as directors of CSFS on 12 May 2017 and Directors of MCS on 27 June 2017. The terminations and new appointment were registered on Companies House from 27 June 2017.

Objectives and scope

11. The objective of this review was to establish whether the allegations received were founded and in doing so, identify whether any non-compliance or irregularity had occurred with regard to the use of public funds.

12. ESFA reviewed trust documentation to assess the adequacy and effectiveness of governance, risk management and control, including propriety, regularity and value for money. ESFA also considered whether any potential fraud or irregularity had occurred.

13. The ESFA team undertook a review of the allegations during a visit from 19 to 20 April 2017. Owing to the lack of required information on site during that visit ESFA continued over subsequent months to request and review relevant information and interview key staff to discuss outstanding issues.

14. The work undertaken consisted of:

- review of relevant documentation, including governing body minutes and supporting policies
- testing of financial management information, including transactions
- review of publically available information, including Companies House records
- interviews with key trust personnel

15. The work undertaken was restricted to reviewing evidence in relation to the allegations and identification of any financial irregularity and/or breaches of the AFH.

Findings

Collective Spirit Community Trust charges

16. ESFA review of the trusts' financial documentation confirmed that CSCT issued individual payment schedules to MCS and CSFS dated 1 September 2016 which confirmed estimated services to be provided to each trust for the forthcoming year. The schedules stated annual cost for each service, total amount for the year and how this annual amount would be paid monthly. Contracted services included a wide variety of different supplies from facilities management, corporate functions and educational provision and support to legal and auditing provision.

17. ESFA's review of MCS and CSFS financial documentation for the 2016/17 academic year identified that in relation to these services, the trusts' spent at least £95,549 and £406,706 respectively, with the supplier CSCT. This is broken down by month in table 1 below:

Table 1: Payments to CSCT by MCS and CSFS in 2016/17 from bank statements.

Month	Monthly payments by MCS to CSCT (gross) £	2016/17 payment profile from MCS to CSCT (exc vat) £	Monthly payments by CSFS to CSCT (gross) £	2016/17 payment profile from CSFS to CSCT (exc vat) £
September 2016	15,650	13,402	46,776	39,898
October 2016	11,649	9,708	47,877	39,898
November 2016	13,650	11,375	47,471	39,898
December 2016	13,650	11,375	47,877	39,898
January 2017	13,650	11,375	47,877	39,898
February 2017	13,650	11,375	56,276	39,898
March 2017	13,650	11,375	56,276	39,898
April 2017	-	11,375	56,276	39,898
May 2017	-	11,375	-	39,898

June 2017	-	11,375	-	39,898
July 2017	-	11,375	-	39,898
August 2017	-	11,375	-	39,898
Total for 16/17 only (Sept – Aug)	95,549	136,860	406,706	478,776

18. The ESFA obtained invoices that support some, but not all of the monthly payments made to CSCT. ESFA encountered significant difficulties reconciling the payments to the profile particularly where summary invoices were not supported with a detailed breakdown of services. Additionally, some invoices reviewed did not reconcile to the amounts listed above. As a result, ESFA is unable to confirm with any assurance the totality of spend with CSCT. This is a breach of para 2.2.4 of the AFH which requires 'good financial management and effective internal controls' to be maintained.

Increases in CSCT charges

19. Review of email trails confirmed the increased amounts from September 2016 being paid by CSFS to CSCT, as evidenced above, were queried (formally and informally) by operational staff, the Accounting Officer (AO) at CSFS and the LGB Chair of MCS, at various times, towards the end of 2016 and culminating in March 2017. These queries were raised with the Chair of Directors and the LGB Chair of CSFS.

20. Email evidence confirmed delays in payment of CSCT invoices by operational staff in February 2017, which led to the Chair of Directors issuing a management instruction to all employed and agency staff on 6 March 2017. The email seen by the ESFA team communicated that:

- all outstanding February 2017 payments to CSCT needed to be paid by 7 March 2017
- all future payments to CSCT must be made in accordance with the contract
- where invoices require challenge or query, staff should by all means do so but directly and politely with the provider.

21. Review of trust correspondence confirmed that on 23 March 2017 the LGB Chairs of MCS and CSFS and the Chair of Directors met with CSCT to agree early termination of the three-year contract, which was due to end in August 2018. A termination date of 28 April 2017 was successfully agreed with no compensation or

penalty payments for early termination. CSCT also agreed to provide a full set of accounts for 2016/17 for the delivery of services and also to reimburse the trusts any balance of funds remaining at the end of the contract. At the time of writing, the ESFA are unable to confirm whether a set of accounts was provided. The trust has confirmed no balance of any funds was provided.

22. At the end of March and beginning of April 2017 emails reviewed by ESFA confirmed the AO and operational finance staff at CSFS emailed the Chair of Directors and the LGB Chair of CSFS raising concerns around the March and April 2017 invoices from CSCT. These concerns included:

- limited or no evidence for delivery of certain CSCT invoiced items on the March and April 2017 invoices
- why these invoices were paid at the start of the month rather than after delivery of service
- 2 sets of March and April invoices from CSCT were received by the trust. One set for £47,877.60 each month and one set for £56,276.40. Operational staff were unclear why invoices for different amounts for the same months existed and suggested delaying payment to CSCT
- why there were further advance invoices received from CSCT from April to August 2017, given March 2017 was supposed to be the last invoice.

23. In response, the LGB Chair of CSFS email, as seen by ESFA, to trust staff stated that:

- the revamped charges are linked to the phasing of expenditure with the contracts being terminated earlier and the additional costs, specifically for additional educational consultancy support as a result of special measures. The revisions were agreed by the AO and Acting Principal and signed off by the Chair of Directors
- CSCT had voluntarily agreed to terminate the contract early without penalties, despite lawyers clarifying CSCT would be entitled to the remainder of the contract
- there was a misunderstanding around how costs were calculated. The total annual amount was broken down into monthly amounts, so the school being open or closed had no bearing on cost breakdown
- delaying payment was a breach of contract and there was a management instruction from the Chair of Directors to make a payment. Failure to make a payment could result in suspension of services which would cause chaos
- there are no further invoices, only March and April are outstanding and the chair of the board has signed a termination contract

24. On 11 April 2017, CSCT emailed the LGB Chair of CSFS and the LGB Chair of MCS stating payment had not been received for the March invoice and that they

would be forced to suspend services. CSCT also suggested the termination agreement would become void. Payment was requested by 13 April otherwise services would be suspended from 18 April.

25. Given the concerns around payments to CSCT the ESFA requested assurances (through the LGB Chair of MCS) from the trusts that outstanding payments to CSCT were compliant with their financial procedures and requirements of the AFH. This assurance was provided on behalf of MCS and CSFS by email by the LGB Chair of CSFS on 13 April 2017.

26. During the ESFA visit on 19 and 20 April 2017 the review team identified:

- no evidence that the rationale and authorisation to pay increases in CSCT invoices was formally discussed at the joint board
- evidence of board meetings for the joint board and CSFS board for September and December 2016 and January 2017. No further evidence of other meetings was available at the time of our visit

27. The findings within this report, specifically the lack of sufficient contract management, inadequate supporting financial documentation and control arrangements confirm the assurances provided by the LGB Chair of CSFS were inadequate. Failure to ensure adequacy of control arrangements, provide the necessary assurances and maintain adequate supporting documentation are breaches of AFH para's 2.3.3, 3.1.3 and 4.6.2. The LGB Chair has also potentially breached directors' duties under the Companies Act 2006, specifically, s.172 and s.174 by failing to act in the best interests of the trust and/or failing to promote the success of the trust.

28. ESFA analysis of the CSCT invoices confirmed that whilst amounts paid by MCS remained relatively stable in 2016/17 the monthly charges paid by CSFS to CSCT rose by 11.6% from August (£41,903 at August 2016) to September 2016 and a further 17.5% from January to February 2017. As a result, CSFS costs increased by some £14,373 (34%) from August 2016 to April 2017. The increases were not included in the payment schedule agreed at 1 September 2016.

29. ESFA discussion with the AO at MCS confirmed that MCS had also received a proposed increased monthly invoice from CSCT for £21,550.80 from February 2017. The proposed increase was also contrary to the annual payment schedule provided to MCS at 1 September 2016. However, after challenge from the MCS AO and LGB Chair, the regular monthly invoice amount of £13,650 was not increased.

Conflicts of interest

30. The MCS 2015/16 trust financial statements declare £155,893 was paid to CSCT for the period that a connected CSFS board member was also a director at

CSCT. That board member ceased to be a director of CSCT on 31 December 2015. Similarly, CSFS 2015/16 trust financial statements declare spend of £139,676 with CSCT up to 31 December 2015 in relation to the same connected board member.

31. During an interview on 20 April 2017 the (former) Chair of Directors and LGB Chair of CSFS were asked about the connection between the trusts and CSCT. Both chairs confirmed the connection was through an existing board member (para 33). When asked whether the Chair of Directors was connected to CSCT, both interviewees were initially unsure. The ESFA team review of Companies House information confirmed the Chair of Directors was a 50% shareholder of CSCT since the company's incorporation on 22 January 2014. The Chair of Directors stated during interview he had limited awareness of being a shareholder.

32. Additionally, ESFA review identified another board member on both MCS and CSFS boards who is also listed as a shareholder for CSCT. The former CEO of both trusts is also connected to CSCT. The role of the former CEO within CSCT is unclear but this individual was responsible for the emails to MCS and CSFS chasing payment.

33. ESFA review of trust documentation confirmed these connections were not disclosed in the MCS or CSFS 2015/16 trust financial statements, were not declared in annual declarations of interests and were not adequately declared or managed in relevant board meetings, including those of September, October and December 2016 and January 2017. Additionally, an email dated 22 March 2017 confirms the Chair of Directors issued specific instructions to management of both MCS and CSFS to make payments to CSCT as previously instructed. The failure of the Chair to disclose his shareholder interest in CSCT is a breach of AFH 2015 paras 3.1.12, 3.1.13, 3.1.20 and trust Article 6.6 due to failure to comply with the requirements of Article 6.8. Failure to adequately maintain a complete register of interests is also a breach of AFH para 3.1.17.

34. ESFA review work also identified that the related party transaction cost of £155,893 in the MCS 2015/16 financial statements was understated; the connection continued after the board member, stated in para 32, resigned as a director of CSCT on 31 December 2015 because another director remained in post while a shareholder of CSCT. In turn, CSFS transactions with CSCT should have been declared in the region of £502,835 as opposed to the £139,676 stated. Failure to declare the total amount of related party transactions is a breach of para 7.6 of the Academies Accounts Direction and subsequently the AFH 2015 1.4.3.

Continuing involvement of the former CEO

35. The former CEO of MCS and CSFS resigned as a director of both trusts according to Companies House data on 11 September 2014. Despite stepping down,

the October 2016 minutes show the former CEO incorrectly listed as a director of the overarching board. MCS and CSFS 2015/16 trust financial statements confirm he remained as a trust member and CEO during 2015/16.

36. Review of joint board minutes for September and December 2016 identified that the former CEO continued to attend meetings. However, the minutes do not clarify his actual role and responsibility. Furthermore, the 2016/17 financial statements for both trusts do not refer to him acting in any capacity. The content of the minutes from September 2016 show him attending meetings and acting in a strategic leadership (ex officio) capacity. The minutes reviewed include specific reference to him:

- presenting draft terms of references for committee discussion
- outlining the priorities for financial improvement
- confirming he would have oversight for finance and governance
- describing his role with CSFS as a leader of charitable companies, a founder of CSFS, a member of the strategic monitoring group and a supplier to the school

It is unclear what the role of the former CEO was in relation to CSCT but there was a clear connection with the company. Emails generated in March 2017 by the former CEO from a private email address and reviewed by ESFA, confirmed the emails were chasing payments due to CSCT.

37. The joint board minutes for December 2016, state the Chair of Directors confirmed the former CEO would be temporarily embedded in the school. The minutes also confirm the former CEO was part of the strategic monitoring group. Evidence to date confirms the former CEO continued to attend meetings and be involved in discussions with the RSC office until January 2017. ESFA has no evidence of continuing involvement after March 2017.

Governance and internal control

38. The concerns raised by various operational staff regarding CSCT invoices, were discussed during interview with the (former) Chair of Directors and the LGB Chair of CSFS. ESFA asked whether the trust boards (at that time) had conducted any specific work to investigate these concerns given the management instruction regarding these payments and that CSCT was a connected party. Both interviewees confirmed no specific work had been conducted by themselves or the boards to investigate staff concerns regarding the CSCT invoice increases and potential lack of delivery of certain services. This is a potential breach of AFH para 4.8.1 which states "trusts must take appropriate action where fraud, theft and/or irregularity is suspected or identified".

39. ESFA review of MCS and CSFS 2015/16 financial statements confirmed the Chair's connection to CSCT was not disclosed, contrary to the Academies Accounts Direction para 9.4.12 which is also a breach of AFH 3.1.3. Additionally, the connection was not declared by the Chair of Directors in his annual declarations of interest or in relevant board meetings.

40. Review of financial information confirmed that prior to September 2016, the Chair of Directors would physically sign off CSCT invoices using an authorisation cover sheet. This ceased from September 2016 onwards. ESFA were unable to identify any formal control process for checking and authorising CSCT invoices during 2016/17, particularly given the connections to CSCT. The Chair of Directors approving payments to a connected company would be deemed a conflict of interest resulting in inadequate internal control. Given the senior connections to CSCT, the boards of both trusts should have implemented robust methods for managing the contract at arm's length and hence managing the inherent conflicts. This is a breach of AFH para 3.1.13 and Charity Commission Essential Trustee guidance, para 6.3 dealing with conflicts of interest and conflicts of loyalty. This is also a breach of the trusts Article 6.6.

41. ESFA interviewed the Chair of Directors and LGB Chair of CSFS, in post at that time, during their site visit from 19 to 20 April 2017. During interview the answers provided by the Chair of Directors and the LGB Chair of CSFS regarding invoicing and cost inflations for services did not provide sufficient assurance to the ESFA team around financial control arrangements. Furthermore, ESFA review of financial documentation during the visit also found this did not adequately support the increases or payments being made.

42. ESFA requested the Chair of Directors and LGB Chair of CSFS clarify a number of queries and to obtain the missing financial information. On 25 April ESFA received a brief confirmation from the Chair of Directors that he was pursuing the requested information.

43. On 21 June 2017 the ESFA review team was advised of a number of changes at the trusts, specifically:

- an alternate trust board chaired by the CEO of Consilium had been established to oversee immediate improvements at CSFS
- the Chair of Directors and LGB Chair of CSFS had both resigned from the joint Board
- the trust had requested closure of the school and a decision was being sought from Ministers on the closure of CSFS

44. On 26 June 2017, ESFA issued a letter to the two trusts requesting the outstanding information. The ESFA team met with the new Chair of Directors to

discuss the concerns arising from ESFA's previous visit in April and to clarify any current issues raised by the new incumbents of the trust.

45. ESFA has continued to pursue the outstanding information and missing financial documentation through the newly appointed trustees and finance staff within MCS and CSFS. However, this has been extremely challenging owing to the lack of any robust processes or procedures, lack of relevant information and poor record keeping by the previous trust. New staff and trustees at MCS have also highlighted several items of IT equipment which may have been retained by former trustees and/or employees. Limitations on the documentation available meant the missing IT equipment could not be substantiated. The failures highlighted confirm a number of breaches of the AFH, including paras 1.5.13 and 1.5.22 in relation to ensuring probity and value for money, para 2.2.4 requiring good financial management, para's 2.3.2 and 2.3.3 relating to sound internal control and specifically paragraphs 4.6.1 and 4.6.2 which require trusts to provide ESFA with access to all information, including records of delivery which must be retained for at least 6 years after the end of the period to which funding relates.

46. ESFA had a further meeting with the former Chair of Directors on 26 September 2017. Although subsequent to this meeting the former Chair, provided some additional documentation there remains a number of outstanding queries, supporting documentation and invoices in relation to the payments detailed at Table 1.

47. ESFA has attempted to review and compare new suppliers service charges, including payroll, since the CSCT contract ceased on 28 April 2017, to confirm whether the CSCT charging arrangements complied with the "at cost" policy. However, achieving any reliable comparisons has not been possible owing to a number of changes, including reducing pupil/staff numbers which impact upon the level and value of service provision. As a result, without the underlying information and invoices that underpin CSCT's overall service charge, no definite conclusions could be reached with regard to the validity and value of funds paid to CSCT and whether potential charges were above the "at cost" requirement.

Conclusion

48. Owing to the lack of supporting documentation and evidence in relation to the financial transactions ESFA is unable to conclude on the allegations, specifically whether:

- costs were inappropriately inflated
- invoices were submitted for services not delivered

49. Furthermore, ESFA is unable to substantiate whether the former trustees complied with the “at cost” policy and were therefore potentially in breach of AFH 3.2.2 owing to the connected party relationships.

50. Review of documentation by ESFA and the governance and control arrangements operated by CSFS and MCS casts significant doubt on the legitimacy of funds paid to CSCT. ESFA has however encountered substantial difficulties establishing any reasonable audit trail of financial transactions or evidence to assure the regularity of funds spent by the trusts. Evidence and observations to date confirm a number of significant breaches of the AFH, including:

- para 1.5.15 - The board of trustees must understand their statutory duties as company directors as set out in the Companies Act 2006. These comprise the duties to:
 - avoid conflicts of interest
 - declare interest in proposed transactions or arrangements
- para 2.3.2 - The academy trust must establish a control framework that recognises public expectations about governance, standards and openness
- para 3.1 - The academy trust must be able to show that public funds have been used as intended by Parliament
- para 3.1.12 - Academy trusts must be even-handed in their relationships with connected parties by ensuring that:
 - trustees understand and comply with their statutory duties as company directors to avoid conflicts of interest, not to accept benefits from third parties, and to declare interest in proposed transactions or arrangements.

51. As a result of the above failings ESFA also consider there to have been a breach of the Companies Act 2006, specifically breaches by the former Chair of Directors, of directors’ duties set out at sections 170-177 of the Act. In particular the requirement:

- to exercise independent judgment
- to exercise reasonable care, skill and diligence
- to avoid conflict of interest

- to declare interest in a proposed transaction or arrangement

52. The trust has also failed to comply with the Academies Accounts Direction by not ensuring the completeness of all related party transaction declarations.



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