



Education & Skills
Funding Agency

Investigation report

Thrive Partnership Academy Trust

November 2018

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Executive summary

1. Multiple allegations were received on 27 March 2018 in relation to Thrive Partnership Academy Trust, (hereafter referred to as the trust), raising concerns about financial management and governance. The ESFA commissioned an initial on-site fact finding visit to take place from 9 to 11 May 2018. However, whilst onsite, this was escalated to an investigation with a further visit taking place from 6 to 7 June 2018.

2. The ESFA review identified a number of failings and weaknesses in financial management and governance arrangements that breach the Academies Financial Handbook (AFH) 2017 and validate the concerns raised. Key findings of the review have confirmed:

- poor **procurement** practices where the trust chose to appoint the most expensive of three potential suppliers for branding and website design (paragraphs 10 to 15 refer)
- instances of potentially irregular **procurement** expenditure in relation to gifts, hampers and alcohol being charged to hotel rooms (paragraph 16 and 17 refer)
- poor **governance** oversight as minutes of the trust board prior to the loan application demonstrated very little discussion on finance matters and no challenge over variances (paragraphs 19 to 23 refers)
- lack of **governance** oversight which meant the Chief Executive Officer (CEO) and Executive Principal (EP) were in attendance and contributed to finance committee meetings (paragraph 24 refers)
- **recruitment** of three senior staff being made without the trust boards knowledge (paragraphs 25 to 28 refer)
- **severance payments** being made to staff with apparent capability/absence issues (paragraphs 29 to 32 refer)
- a lack of transparency in reporting the trust's **governance arrangements** and structure on its website and Get Information about Schools (GIAS), and the structure is also not in line with recommendations (paragraphs 18 and 33 to 35 refer)
- the information recorded on the trust's website in respect of **business interests of the members and trustees** was not in line with information recorded at Companies House (paragraphs 33 to 35 refer)

Background

3. The trust operates two secondary schools, Philip Morant in Colchester, which has a roll of 1593 and Colne Community in Brightlingsea, which has a roll of 1357. Colne Community School joined the trust on 1 September 2016, at which time the trust was renamed Thrive Partnership Academy Trust.

4. Ofsted had rated Colne in 2013 as outstanding and Philip Morant in 2015 as good. However, they have recently revisited both schools and carried out Section 5 inspections, Colne School was visited from 15 to 16 May 2018 and Philip Morant from 22 to 23 May 2018. The reports for these inspections were published on 6 July 2018 and both schools have now been judged as inadequate.

5. On 22 March 2018, the trust board suspended the CEO and the EP, without prejudice following allegations of inappropriate conduct and financial mismanagement. An independent investigation has been commissioned by the trust. At the time of drafting this report, the outcome of the work was not yet complete.

6. In March 2018, the ESFA received allegations relating to poor financial management and governance at the trust. As a result, an ESFA team undertook two on-site reviews of the allegations from 9 to 11 May 2018 and 6 to 7 June 2018. Our review covered the arrangements in place during 2016/17 and for 2017/18 up to and including the dates of the review.

Objectives and scope

7. The objective of this review was to establish whether the allegations received by the ESFA were evidence-based and in doing so, identify whether any non-compliance, potential fraud or irregularity had occurred with regard to the use of public funds. Specifically, the allegations related to:

- spending outside the scheme of delegation
- an application for the advance of General Annual Grant (GAG) funding was made without the knowledge or approval of the trust's board
- unauthorised recruitment of staff
- unapproved severance payments

8. The scope of the work conducted by the ESFA in relation to the allegations, included assessing the adequacy and effectiveness of governance, risk management and control, including propriety, regularity, and value for money. This included:

- review of relevant documentation, including governing body minutes and supporting policies
- testing of financial management information, specifically in relation to the allegations received
- interviews with key staff and trustees

In accordance with ESFA investigation publishing policy (August 2014), the relevant contents of the report have been cleared for factual accuracy with Thrive Partnership Academy Trust.

Findings

Procurement

9. We sample tested twenty of the highest value suppliers from a list provided from the trust's purchase ledger to confirm compliance with their finance policy and the AFH. The majority of the high value transactions identified were for exams or specialist support, where we established there was only one possible supplier. Whilst other transactions for school trips were high value, the trust had obtained quotes to identify the cheapest supplier.

10. However, we did identify that the Executive Business Director (EBD) obtained quotes from three companies for the trust's branding and website design. The EBD prepared a business case with a recommendation to the board, which was to choose the supplier with the lowest quote. The trust however, chose to appoint [REDACTED], which was the most expensive of the three options. The trust board minutes of 6 July 2017 confirm that the trust directors approved their appointment. The AFH states in this respect at 3.1.3 that academy trusts must ensure that:

- spending decisions represent value for money, and are justified as such

11. The trust's finance policy states at 8.3, "it is necessary to take the principles of best value into account at all times although this is not necessarily the lowest cost. An explanation will need to be provided when the lowest cost quotation or tender is not accepted". No such explanation was available by way of our review of the minutes and the minutes of 6 July 2017 also state that the price had since increased.

12. Since October 2015, £138,814 has been paid to [REDACTED], in respect of the learning environment and websites, plus additional services not quoted for, which included a number of one off projects and a marketing campaign for the trust's sixth form. We also identified that purchase orders had not been raised for 16 of the invoices processed. The trust's Finance Policy states under Routine Purchasing, that:

- all orders must be made in writing using an official order requisition form, stocks of which are held in the Finance Office, or via the online Ordering Portal once this facility is available. Paper orders must bear the signature of the member of staff requesting the order; they will be countersigned by their line manager as required and must be forwarded to the Finance Office where they will be checked to ensure adequate budgetary provision exists before the order is processed. Online orders follow the approval workflow defined within the system, which is similar in principle to the paper approach

13. There are links between [REDACTED] and staff employed by the trust. The events and marketing co-ordinator for the trust's teaching school, [REDACTED] is the brother of one of [REDACTED] directors and is also married to the assistant principal at Philip Morant.

The minutes approving the appointment of [REDACTED] state that there are no conflicts of interest concerns. Whilst there are no direct trust board connections with [REDACTED], in the interests of transparency it would be good practice to declare existing trust staff interests in the board minutes.

14. The 2016-17 management letter issued by the trust's external auditors raised a further issue in relation to procurement, it stated that "Transactions with [REDACTED] and any other related party transactions should be identified and conducted in accordance with the requirements of the AFH. Where such transactions occur, they should be properly procured through an open and fair process and be supported by a statement of assurance from that individual".

15. We also identified expenditure incurred with the [REDACTED] that included a charge for a no show room and instances of alcohol being charged to rooms. Additionally, sample testing of transactions selected from the trust's 4 charge card statements identified 4 instances where purchases had been made for hampers, some of which included wine. The purchases had been requested by the CEO through his PA, by email and the actual purchases were made by a member of the finance team. The requisition document specifies that the CEO authorised the transactions and that they were thank you gifts. Recipients of the hampers were:

- the EP
- the previous chair
- a previous trustee
- the former chair of Colne local governing body

16. The trust has a code of conduct which states that employees can accept gifts of a token nature but trustees or former trustees are not included in the code. The value of the hampers was £179 and three also contained alcohol. Owing to the cost of the purchases and the recipients involved this is a breach of the trust's code and therefore deemed to be irregular expenditure. Consideration should therefore be given to recovering funding spent on such items.

Governance arrangements and structure

17. We reviewed the governance structure in operation at the trust as identified in the 2016/17 audited accounts and noted that the trust's membership changed in 2016/17, from 5 members to 3. The AFH states in this respect that trusts should have a minimum of three members, and recommends that they should have at least five, wherever possible.

18. Our review of the board meeting minutes for 2016/17 and 2017/18 to date, identified that prior to the start of the 2017/18 academic year; there was very little evidence of challenge or discussion of the trust's financial position. The board began discussing how to address the forecast in year deficit at the extraordinary meeting of 5 October 2017,

where they discussed short, medium and long term strategies and actions needed to secure the financial viability of the trust. Also at this meeting, the possibility of applying for an advance of GAG funding was discussed. However, whilst the CEO was instructed to explore the mechanisms for applying for an advance of GAG funding further, the meeting minutes do not include the authority to make such an application.

19. We have confirmed that the CEO contacted ESFA, via academy questions, on 9 October 2017 and that the reason for the enquiry was recorded as:

- We are looking to see if we can secure a loan from the ESFA. We have an in year negative balance and we are likely to require funds to support an extensive staff restructure

20. Subsequently and due to the fact that the trust were citing a deficit as the reason for needing the loan, the CEO was contacted on 12 October 2017 and again on 18 October 2017. The CEO was informed that the trust would be required to submit a recovery plan by 17 November, which should show the following:

- a return to a balanced in-year budget
- a return to a balanced cumulative budget
- an explanation of any support the trust is requesting from the ESFA with an explanation of why this is needed. These figures must be shown in the budget forecast and cash flow forecast along with proposed repayment dates/amounts

21. The current chair of trustees and the chair of the Finance and Audit Committee, stated during interview that they did not know that the loan had been applied for until 5 March 2018 when they received an email from the former chair. However, the CEO maintains, in response to a review of our draft report, that trustees were informed that an application had been made. Our review of part B of the minutes of the Finance and Audit Committee meeting held on 22 November 2017, confirmed that the CEO is recorded as informing the meeting that a loan application had been completed and that the main purpose of the loan was to cover redundancy costs. The minutes demonstrate that the committee asked a number of further questions, including how the £1.4m loan figure was calculated and that they should only borrow what was needed. Trustees agreed that the Voluntary Severance Policy should be circulated and natural wastage looked at before considering settlement agreements or redundancies.

22. The loan application and supporting documentation were scrutinised by ESFA, which resulted in questions being raised, subsequently a change to the requested amount was made. Following further scrutiny and discussions with the trust between December 17 and March 18, the application was withdrawn on 16 March 2018.

23. Our review of the finance committee meeting minutes identified that prior to their suspension, the CEO and EP were not in attendance just to provide information and participate in discussions. We identified that they contributed to and made proposals to

the meetings. This included suggesting the committee override the external auditor's advice. The trust minutes did not demonstrate any challenge from the members of the committee regarding this proposal. This is a breach of the AFH which states at 2.4.3, that audit committee functions should be established in such a way as to achieve internal scrutiny which delivers objective and independent assurance, which means that:

- where the trust operates a combined finance and audit committee, staff may be members but should not participate as members when audit matters are discussed; they may remain in attendance to provide information and participate in discussions
- the accounting officer and other relevant senior staff should routinely attend the committee in the capacity set out directly above

Recruitment

24. The trust's finance policy, incorporating its scheme of delegation, states in respect of recruitment, that as part of the annual budget process, "the trust board will approve a staff establishment for the trust and academies. Substantial changes (e.g. the addition of permanent full time posts) can only be made to this establishment (in line with the Scheme of Delegation) with the express approval in the first instance of the Finance Committee and Chief Executive Officer who must ensure that adequate budgetary provision exists for any establishment changes, which must be approved by the Trust Board".

25. Also, that "All staff appointments must be approved by the trust board. The trust board will appoint the Chief Executive Officer, Executive Business Director and Finance Director. The Chief Executive Officer may appoint Heads of School once approval has been given, and the Chief Executive Officer and Heads of School may appoint teaching and support staff at their schools, following board approval".

26. The finance policy is at odds with the trust's Recruitment and Selection Policy, which states that "the authority to recruit has been delegated by the board to the Executive Principal and head of school in respect of assistant principal appointments. The trust made three senior appointments prior to the start of the current academic year, including two assistant principals. We were informed that the board were aware of only one appointment". We requested the personnel files for these appointments and our findings were:

- there was a job description and advert in the file for the appointment known to trustees but no authority to recruit
- there was no job description, advert or authority to recruit for the other two appointments

27. Notwithstanding the delegated authority, the policy states at 5.1.1, that careful consideration will be given to the necessity of filling the post, the tasks to be undertaken

and the skills, attributes and behaviours required to do the job. Where necessary, amendments to the role and staffing structure will be approved by the trust board. We were informed that the assistant principal and SENCO posts resulted in changes to the staffing structure.

Severance payments

28. The trust's scheme of delegation states that the authority to end a member of staff's employment must come from the local governing body. 4 members of staff have received severance payments in this academic year (2017-18) and 2 received payments in 2016-17. We requested the personnel files and supporting documentation in respect of these. Our findings were:

- there was no evidence that the local governing bodies had approved these terminations
- it is not clear if the severance payments are contractual or above the statutory entitlements and if so, they therefore should have been treated as special severance payments
- 2 appear to relate to disciplinary matters
- 2 appear to relate to absence issues
- legal advice relating to one of the 2 potential disciplinary and one of the 2 potential absence issues, does not appear to have been sought
- 2 settlement templates were approved /signed off after the date of leaving
- 4 agreements were dated after the date of leaving

29. The AFH states in respect of severance payments at 3.7.4, that if an academy trust is considering making a staff severance payment above the statutory or contractual entitlements, it must consider the following issues before making a binding commitment:

- that trustees reasonably consider the proposed payment to be in the interests of the trust
- whether such a payment is justified, based on a legal assessment of the chances of the trust successfully defending the case at employment tribunal. If there is a significant prospect of losing the case then a settlement may be justified, especially if the costs incurred in maintaining a defence are likely to be high. Where a legal assessment suggests that the trust is likely to be successful, then a settlement should not be offered
- if the settlement is justified, the trust would then need to consider the level of settlement. This **must** be less than the legal assessment of what the relevant body (e.g. an employment tribunal) is likely to award in the circumstances

30. It also states at 3.7.5, that staff severance payments should not be made where they could be seen as a reward for failure, such as gross misconduct or poor performance. The only acceptable rationale in the case of gross misconduct would be where legal advice is that the claimant is likely to be successful in an employment

tribunal claim because of employment law procedural errors. In the case of poor performance, an acceptable comparison would be the time and cost of taking someone through performance management and capability procedures.

31. We have therefore asked the trust to investigate and confirm if the severance payments made had been appropriately approved and were justified as in the best interests of the trust. Also that they confirm whether appropriate legal advice was sought in light of the issues in relation to performance and absence and if the payments made were contractual or if there was an element of the payments that was non-statutory or contractual.

Business interests of members and trustees

32. We identified that the information recorded on the trust's website in respect of members and trustees is not in line with the audited accounts and what is recorded on Companies House. Our findings were:

- 2 members are not listed on the trust's website, therefore disclosure of their business interests has not been made
- business interests have not been disclosed for 1 resigned and 2 current members
- full disclosure has not been made for 3 current trustees, 1 of which is also a member
- none disclosure of business interests was also identified as an issue by the trust's external auditors as listed in the 2016/17 Management Letter

33. This is a breach of the AFH, which states at 2.5.2, in the interests of transparency, an academy trust must publish on its website up-to-date details of its governance arrangements in a readily accessible format. This must include:

- for each member who has served at any point over the past 12 months, their full names, date of appointment, date they stepped down (where applicable), and relevant business and pecuniary interests including governance roles in other educational institutions
- for each trustee and local governor who has served at any point over the past 12 months, their full names, date of appointment, term of office, date they stepped down (where applicable), who appointed them (in accordance with the trust's articles), and relevant business and pecuniary interests including governance roles in other educational institutions. If the trust's accounting officer is not a trustee their relevant business and pecuniary interests must still be published

34. This is also a breach of the AFH at 3.1.20, which states that trusts must publish on their websites relevant business and pecuniary interests of members, trustees, local governors and accounting officers.

Conclusion

35. A number of significant findings and breaches of the AFH have been identified. These including, poor oversight, poor procurement practises, questionable recruitment and severance processes and instances of irregular expenditure.

36. The trust needs to take urgent action to resolve the issues, including greater consideration given to the robustness of financial management and governance arrangements by the board. Annex A includes a table of findings, breaches of frameworks and specific recommendations for the trust.

Annex A

The following table lists the review findings, breaches and specific recommendations for the issues.

| | Finding | Breach of AFH / framework | Recommendation |
|--------------------|--|--|---|
| Procurement | | | |
| 1 | Value for money cannot be demonstrated through procurement practises in operation. | This is a breach of the AFH, which states at 3.1.3 that academy trusts must ensure that: <ul style="list-style-type: none"> • spending decisions represent value for money, and are justified as such | The trust should ensure that if they decide to proceed with the purchase of goods or services, where the quote obtained isn't the lowest, there is a documented rationale for doing so. |
| 2 | There are links between ██████████ and staff employed by the trust. The minutes approving the appointment of ██████████ state that there are no conflicts of interest concerns. | Best practise. | Whilst there are no direct trust board connections with ██████████ in the interests of transparency it would be good practice to declare existing trust staff interests in the board minutes. |
| 3 | The 2016-17 management letter issued by the trust's external auditors raised an issue in relation to procurement that identified: "related party transactions (RPT's) in excess of £2,500 may not have been conducted in accordance with the 'at cost' requirement". | This is a breach of the AFH, which states at 3.2.2, a trust must pay no more than 'cost' for goods or services provided to it by the following persons ('services' do not include services provided under a contract of employment): <ul style="list-style-type: none"> • any member or trustee of the academy trust • any individual or organisation connected to a member or trustee of the academy trust. | The trust must ensure it complies with the AFH's "at cost" requirements. |

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| 4 | Non-compliance with the trust's finance policy in respect of purchase orders. | Non compliance with the trust's finance policy. | The trust should ensure that it complies with its finance policy and raises an appropriately approved, paper or electronic purchase order on each occasion. |
| 5 | Testing of expenditure through the trust's purchase ledger and the trust's charge cards identified instances of irregular expenditure. | Non compliance with the trust's code of conduct. | The trust must ensure that public money is spent for the purposes intended by Parliament. A recovery of funding spent on items deemed as irregular should be sought. |
| Governance arrangements and structure | | | |
| 6 | The trust's membership changed in 2016/17, from 5 members to 4. At the time of our visit, the trust's website listed 3 members. | The AFH states in this respect that trusts should have a minimum of three members, and recommends that they should have at least five, wherever possible. | The trust should consider its membership in line with the AFH's recommendation. |
| 7 | Very little evidence of challenge or discussion of the trust's financial position prior to 2017/18. We also identified that: Whilst the possibility of applying for an advance of GAG funding was discussed, the authority to apply was not apparent. Meeting minutes demonstrate that trustees were aware that an application had been made, which they have disputed. | This is a breach of the AFH, which states at 2.2.4, that the board of trustees, and any separate committee responsible for finance, must ensure sufficient rigour and scrutiny in the budget management process to understand and address variances between the budget that has been set and actual income and expenditure. | The trust must be able to demonstrate compliance in this area and be able to demonstrate that sufficient rigour and scrutiny is applied to its budget management processes. |

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| 8 | The CEO and EP contributed to and made proposals to the finance committee meetings. They also suggested overriding the external auditor's advice. | This is a breach of the AFH, which states at 2.4.3, that where the trust operates a combined finance and audit committee, the accounting officer and other relevant senior staff should routinely attend, but should not participate as members when audit matters are discussed; they may remain in attendance to provide information and participate in discussions. | The trust must be able to demonstrate compliance in this area and ensure that staff employed by the trust do not participate as members of a combined finance and audit committee when audit matters are being discussed. |
| Recruitment | | | |
| 9 | Recruitment of staff without the documented approval of the board. | Non-compliance with the trust's recruitment and selection policy. | The trust must ensure it complies with its own policy over recruitment and selection. They must also ensure that their recruitment and selection processes do not discriminate, in line with the Equality Act 2010. In addition, that they can demonstrate statutory guidance is being complied with but also, that they can demonstrate best practise in terms of open and fair recruitment processes. |
| Severance payments | | | |
| 10 | Severance payments made without apparent local governing body approval. Also, without evidence of legal guidance and to staff with poor performance or absence issues. | This is a potential breach of the AFH, which states at 3.7.4 <ul style="list-style-type: none"> that If an academy trust is considering making a staff severance payment above the statutory or contractual entitlements, it must consider the | The trust must be able to demonstrate compliance with the AFH in respect of severance payments. Further, they should investigate and confirm if the severance payments made had been appropriately approved and |

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| | | <p>following issues before making a binding commitment:</p> <ul style="list-style-type: none"> ○ that trustees reasonably consider the proposed payment to be in the interests of the trust ○ whether such a payment is justified, based on a legal assessment of the chances of the trust successfully defending the case at employment tribunal. If there is a significant prospect of losing the case then a settlement may be justified, especially if the costs incurred in maintaining a defence are likely to be high. <ul style="list-style-type: none"> •where a legal assessment suggests that the trust is likely to be successful, then a settlement should not be offered ○ if the settlement is justified, the trust would then need to consider the level of settlement. This must be less than the legal assessment of what the relevant body (e.g. an employment tribunal) is likely to award in the circumstances. <p>It also states at 3.7.5, that staff severance payments should not be made where they could be seen as a reward for failure, such as gross misconduct or poor performance. The only acceptable rationale in the case of gross misconduct would be where legal advice is that the</p> | <p>were justified as in the best interests of the trust.</p> <p>They should also confirm whether appropriate legal advice was sought in light of the issues in relation to performance and absence and if the payments made were contractual or if there was an element of the payments that was non statutory or contractual.</p> |
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| | | claimant is likely to be successful in an employment tribunal claim because of employment law procedural errors. In the case of poor performance, an acceptable comparison would be the time and cost of taking someone through performance management and capability procedures. | |
| Business interests of members and trustees | | | |
| 11 | Insufficient disclosure of the business interests of trustees and members. | <p>This is a breach of the AFH, which states at 2.5.2, in the interests of transparency, an academy trust must publish on its website up-to-date details of its governance arrangements in a readily accessible format.</p> <p>This is also a breach of the AFH at 3.1.20, which states that trusts must publish on their websites relevant business and pecuniary interests of members, trustees, local governors and accounting officers.</p> | <p>The trust must publish all relevant business and pecuniary interests of members, trustees, local governors and accounting officers on their website.</p> <p>In addition, for each member and trustee who has served at any point over the past 12 months, their full names, date of appointment, date they stepped down (where applicable), and relevant business and pecuniary interests including governance roles in other educational institutions.</p> |



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