



Education
Funding
Agency

Financial management and governance review: Perry Beeches The Academy Trust

Final report

October 2015

Contents

| | |
|---|----|
| Executive summary | 3 |
| Background | 5 |
| Objectives and scope | 6 |
| Review methodology | 7 |
| Detailed findings | 8 |
| Additional findings – financial management and governance | 9 |
| Procurement and contracting arrangements | 9 |
| Conflicts of interest | 10 |
| Value for money | 12 |
| Internal control | 12 |
| Safeguarding | 13 |
| Conclusion | 14 |
| Appendix A – list of findings | 15 |

Executive summary

1. In September 2015 the Education Funding Agency (EFA) received an allegation regarding concerns over financial management and governance at Perry Beeches multi-academy trust, Birmingham (the trust). Specifically, the allegation centred on the Accounting Officer, who is also a member (with no voting rights) and a trustee of the trust, in respect of the following:

- 1.1. payments to Nexus Schools Ltd (Nexus), a third party supplier to the trust for provision of executive services to the trust relate to an additional second salary paid to the Accounting Officer. The payments are collected by Nexus and then reclaimed through this business by Liam Nolan Ltd. The sole director of Liam Nolan Ltd is the Accounting Officer who is also a Director and non-voting Member of the trust

2. After conducting background research, including a meeting with the whistle blower, the EFA conducted a fact finding visit on the 30th September and 1st October 2015 to review the allegation at the trust.

3. EFA findings highlight a failure by the trustees and the Accounting Officer to maintain high standards of probity and stewardship over the management of public funds. The key findings of the review have confirmed:

- the trust pays Nexus for providing the services of a CEO for Perry Beeches multi-academy trust. Nexus then sub contracts this role to Liam Nolan Ltd, whose sole director is the Accounting Officer. This arrangement was approved by directors of the trust and represents a breach of:
 - **the Academies Financial Handbook (AFH) 2014 and 2015 paragraph 3.1.22 in relation the need for trusts to comply with HM Treasury's guidance about the employment and contract arrangements of individuals on the avoidance of tax**
- payments made to the Accounting Officer through Nexus have not been disclosed in the 2013/14 financial statements. This represents a failure to comply with:
 - **the Charities Commission Statement of Recommended Practice (SORP) 2005 Section 230 relating to disclosure of remuneration and benefits received by Charity Trustees**
 - **the Academies Accounts Direction 2014 to 2015 paragraph 7.6.1 in relation to disclosure of material transactions with related parties**

4. Additionally, EFA review findings have highlighted a number of examples where Trustees have not exercised effective oversight and this is a symptom of weak governance. Corroborating evidence has confirmed a number of weaknesses within financial management and governance, including further breaches of the AFH. Specifically:

- the trust spent £1.297m with Nexus over 2 years, without a written contract or a formal procurement exercise to demonstrate value for money resulting in a number of breaches of the AFH 2014 and 2015:
 - **AFH section 1.5 - failure by the trustees / members / directors and Accounting Officer to ensure value for money over the use of public funds**
 - **AFH section 1.5 - failure by the trustees and Accounting Officer to maintain proper stewardship over public funds**
 - **AFH paragraph 3.1.3 – a competitive tendering policy must be in place and applied**

- the trust has inherent conflicts of interest with Nexus that have not been adequately disclosed or managed:
 - **AFH 2014 and 2015 paragraph 3.1.12 – trustee statutory duties as company directors, to avoid conflicts of interest, and principles applying to connected party relationships**

- the trust cannot adequately demonstrate compliance with statutory requirements from services provided by Nexus (e.g. health and safety). This is **potentially a breach of part 3 of the schedule to the Education (Independent School Standards) Regulations 2014 (SI 2014/3283)**.

Background

5. Perry Beeches multi-academy trust (the trust) comprises five schools, including four free schools, based in the Birmingham area. The trust turned Perry Beeches – The Academy from a failing school into one judged outstanding by Ofsted (March 2013). Perry Beeches II was rated outstanding by Ofsted in April 2014 but Perry Beeches III was put into special measures in May 2015.

6. The trust has a Chief Executive Officer (CEO) and three Executive Headteachers. The CEO role and one of the Executive Headteacher roles are performed by the Accounting Officer. This arrangement was agreed within minutes by directors of the trust in September 2012, April 2013 and March 2015.

7. In 2014/15 the EFA provided £11.5m in mainstream funding for Perry Beeches I, II, III and IV. In 2013/14 £8.2m was provided for Perry Beeches I, II and III.

8. On 10 September 2015 the EFA received allegations, with supporting evidence, in relation to the trust's Accounting Officer. The allegations state that the Accounting Officer, who is a non-voting member and director of the trust, is providing consultancy services through a third party private company, Nexus. However, the Accounting Officer's services are not transparent on the invoices Nexus submit. Nexus is used by the trust as a business support consultancy service which assists with procurement and facilities management.

Objectives and scope

9. The EFA's Risk Analysis Division (RAD) was commissioned to undertake a review of allegation 1.1. The objective of the review was to establish the factual accuracy of the allegation and assess compliance with the AFH.

10. The scope of the work was undertaken in three phases. The first phase focussed on information gathering and research regarding the trust and the allegations. The second phase was a two day fact finding visit to obtain information pertinent to the allegations and compliance with the AFH, on site at the trust. The third phase involved collation of information and evidence and to report on findings and required actions.

Review methodology

11. Following receipt of the allegations we collated and reviewed background information around the academy, key individuals and relevant financial data.
12. A visit was arranged with the trust and took place on the 30 September and 1 October 2015 at the trust's premises, 156 Newhall street, Birmingham B3 1SJ. Two working days' notice was provided to the academy of the EFA visit.
13. In undertaking this visit the EFA met and conducted interviews with the following individuals:
 - Chair of Governors (CoG)
 - Acting Chief Finance Officer
 - Accounting Officer/CEO
 - An additional Executive Headteacher
14. While onsite, the EFA reviewed the following documentation:
 - Trust committee minutes for 2014/15
 - Financial procedures and policies
 - Scrutinised invoices, purchase orders, supplier data and related financial documents for 2013/14 and 2014/15
 - Supplier contracts
 - HR and salary records from September 2012
15. Draft findings were discussed at length in a meeting on 1 October 2015 with the CoG, Accounting Officer and an Executive Headteacher.

Detailed findings

16. Nexus is used by the trust to procure a range of goods and services, including accountancy support, payroll, health and safety audits, HR support and construction related expenditure. Nexus submits its invoices listing brief work performed by subcontractors but does not routinely provide the sub-contractor invoices so that the trust can verify costs.

17. Nexus (company number 07751278) is registered at 9 Stafford Street, Brewood, Stafford ST19 9DX. The Nexus invoices received by the school are sent from Berrington Lodge, 93 Tettenhall Road, West Midlands WV3 9PE. Nexus currently has two directors of which one has been the primary contact for the trust.

18. The trust's CoG and the primary Nexus director are both directors in Making Learning Work Partnership Ltd, an organisation with which the academy incurred £7,150 expenditure in 2013/14 (no expenditure incurred in 2014/15). Making Learning Work Partnership Ltd is registered at the same Berrington Lodge address as the Nexus invoices. The CoG and the primary Nexus director are also both directors in The Invicta Film Partnership No 26 LLP.

19. Allegation 1.1. Payments to Nexus (a third party supplier to the trust) for provision of executive services to the trust relates to an additional second salary paid to the Accounting Officer. The payments are collected by Nexus and then reclaimed through this business by a limited company of which the Accounting Officer is the sole director.

20. From a review of Nexus invoices across 2013/14 and 2014/15 and relevant minutes, the trust pays Nexus for providing the services of a CEO for Perry Beeches multi-academy trust. Nexus then sub contracts this role to Liam Nolan Ltd, whose sole director is the Accounting Officer. The Accounting Officer is also paid for his concurrent role as Executive Headteacher separately through payroll at £120,000 per annum in 2014/15. The academy paid Nexus £72,000, including VAT in 2013/14 and £88,800 plus VAT in 2014/15 for the CEO role. This arrangement is a breach of the AFH 2014 and 2015 paragraph 3.1.22 and also contravenes HM Treasury guidance:

- “Academy trusts must ensure that their senior employees’ payroll arrangements fully meet their tax obligations and comply with HM Treasury’s guidance about the employment and contract arrangements of individuals on the avoidance of tax, as set out in HM Treasury’s Review of the Tax Arrangements of Public Sector Appointees. Failure to comply with these requirements can result in a fine by HM Treasury.”
- Specifically the HM Treasury Review (p15 box 4a) advises that the most senior staff should be on payroll unless there are exceptional temporary circumstances. The CEO payment arrangement has been in force since September 2012 so

cannot be deemed temporary. In addition no exceptional reasons were provided by the trust.

21. A review of HR and governance documentation confirmed that directors of the trust have approved the CEO payment arrangement through Nexus at regular intervals, specifically September 2012, April 2013 and March 2015. The EFA did not identify any documentation to confirm the trust had considered the tax implications of this arrangement in relation to AFH 3.1.22 or sought assurance that the arrangements were compliant. It was also noted all invoices for consultancy, which include the CEO salary, are invoiced and paid upfront before the service has been delivered. As well as a breach of Treasury requirements that in this case, those with significant financial responsibility must be on payroll¹, this also represents a failure by trustees in relation to their stewardship over public funds, in ways that command broad public support, and is a **breach of the AFH 2014 and 2015 paragraph 1.5.11 and AFH 2014 and 2015 paragraph 1.5.13.**

22. Furthermore, the payments made to the Accounting Officer, through Nexus and then Liam Nolan Ltd, for CEO services were not disclosed in the 2013/14 financial statements. This represents a failure to comply with the Charities Commission SORP 2005 Section 230 relating to disclosure of remuneration and benefits received by Charity Trustees and consequently the **Academies Accounts Direction 2014 to 2015 (SORP 2005)² paragraph 7.6.1** in relation to disclosure of material transactions with related parties.

Additional findings – financial management and governance

Procurement and contracting arrangements

23. The trust does not have a written contract with Nexus for goods and services provided despite spending £1,297,712 over the 2013/14 and 2014/15 academic years (see Table 1 below). This finding was confirmed by the Accounting Officer. Without a signed and documented contract, the trust may have difficulty enforcing delivery and expectations of both parties are unclear. This finding represents a **breach of the AFH 2014 and 2015 paragraph 1.5.11 relating to failure by** the trustees and Accounting Officer to maintain proper stewardship over public funds. It also breaches clause 4.2 of The Perry Beeches Funding Agreement (March 2015)(“the Funding Agreement”) which

¹ Review of the tax arrangements of public sector appointees (May 2012)

² To produce the Accounts Direction, EFA takes requirements set out by the Charity Commission in its Statement of Recommended Practice (SORP) and translates them into a form applicable to academy trusts.

requires that the trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.

Table 1 – Academy expenditure with Nexus in 2013/14 and 2014/15.

| | Expenditure in 2013/14 (£) | Expenditure in 2014/15 (£) |
|------------------|---------------------------------------|---------------------------------------|
| Inclusive of VAT | 361,665.94 | 936,046.56 |
| VAT | 55,829.86 | 156,007.76 |
| Exclusive of VAT | 305,836.08 | 780,038.8 |

24. The trust does not have an adequately detailed tendering policy, which could be used as a basis for demonstrating value for money and adherence to procurement regulations. Currently, the trust has a very brief “financial procedures” document which is outdated (ratified in autumn 2011) which includes only one procurement threshold of £10,000, has almost no detail on how to demonstrate value for money and includes no reference to EU and UK procurement regulations. This represents a **breach of the AFH 2014 and 2015 paragraph 3.1.3** which requires that a competitive tendering policy must be in place and applied. It is acknowledged the academy is intending to revise its financial procedures document in December 2015.

Conflicts of interest

25. The trust has not appropriately managed the following apparent conflicts of interest:

- a. the Accounting Officer/Trust Director as the sole director of a company contracted by Nexus
- b. our review of committee minutes across 2013/14 and 2014/15 identified that directors approved Nexus (first in September 2012 and then in April 2013 and March 2015) to appoint the CEO of the trust. The role of appointing the CEO should have been undertaken by the members or directors themselves and therefore this arrangement is a **breach of the AFH 2014 and 2015 paragraph 2.1.2**. Through this arrangement, Nexus is in a position of significant influence over the trust, becomes a related party as per paragraph 7.6.4 of the Academies Accounts Direction 2014-15 (SORP 2005) and conflicts of interest therefore need to be managed
- c. of the Chair of Directors of the trust as a co-director of Making Learning Work Partnership Ltd with a Director of Nexus
- d. this represents a **breach of a trustee’s legal duty**, to avoid conflicts of interest and a **breach of the AFH 2014 and 2015 paragraph 3.1.11** regarding principles applying to connected party relationships. This also represents a **failure in the trust’s statutory duties as company directors**

as set out in s.175 and s.181 of the Companies Act 2006 and a **breach of the AFH 2014 and 2015 paragraph 1.5.13**. In particular:

26. Our due diligence identified the CoG has joint business interests with the primary director of Nexus as co-directors of Making Learning Work Partnership Ltd (as per paragraph 18). A document dated 22nd April 2013 indicates the intention that recruitment of a CEO should be handed to Nexus, the existing CEO would then apply for the position via a subcontract with Making Learning Work.

27. A review of declarations of interest confirmed the CoG and the Accounting Officer did not disclose these interests on the latest (2014) annual declaration. This is a **breach of the requirements in AFH 2014 and 2015 para 3.1.17** that:

- “The academy trust’s register of interests must capture relevant business and pecuniary interests of members, trustees, local governors of academies within a multi-academy trust and senior employees, including:
 - a. directorships, partnerships and employments with businesses that provide goods or services to the trust
 - b. trusteeships and governorships including at other educational institutions and charities irrespective of whether there is a trading relationship with the trust”
 - c. and **AFH 2014 paragraph 3.1.18/AFH 2015 paragraph 3.1.19:**

“Trusts should consider carefully whether to include the interests of other individuals in the register of interests. This may include other employees of the trust and close family members of individuals already on the register. Interests are not limited to the items in section 3.1.17 and trusts should consider whether other interests should be registered. If in doubt the presumption should be towards including an interest in the register.”

28. Without appropriate safeguards, it would be difficult to demonstrate conflicts of interest have been adequately managed. It is noted that the trust’s finance subcommittee minutes for 3 February 2014 record a decision to continue with the Nexus contract. At this meeting the CoG declares knowledge of Nexus³ but following “interrogation³” from other attendees it was felt this did not undermine the CoG position to vote on whether to continue with the Nexus contract. The Accounting Officer was also present but did not declare an interest and actually presented information on Nexus.

³ Quotes from Perry Beeches finance subcommittee minutes for 3rd February 2014

29. The trust was unable to provide any documented procedures on handling conflicts of interest.

30. The 2013/14 academy financial statements do not include any related party disclosures for Nexus or disclosure around the monies paid through Nexus for the CEO position. This represents a breach of the AFH 2014 and 2015 paragraph 3.1.14 regarding sufficient disclosure.

Value for money

31. The academy could not provide documented evidence to demonstrate value for money in relation to the £1,297,711 spent with Nexus. Specifically, no evidence of a formal procurement exercise, including quotations and tendering, was available for expenditure with Nexus. It is noted the trust finance subcommittee minutes for 3rd February 2014 record a discussion on whether to continue or end the Nexus contract, with a unanimous decision taken to maintain it. No alternatives to Nexus or alternative supplier quotations were discussed. At the same committee meeting contracts for ICT, telephony, cleaning and photocopying were also discussed. Each of these contracts had between ten and three supplier quotations discussed. The failure to tender for the high value Nexus contract by the trustees, members, directors, and Accounting Officer represents a **breach of the AFH 2014 and 2015 paragraphs 1.5.11 & 3.1.3** to ensure value for money over the use of public funds. The requirement to obtain value for money is also a specific requirement of the role of the Accounting Officer in AFH 2014 paragraph 1.5.21. Additional guidance on procurement is also given in AFH paragraphs 3.1.5 & 3.1.6. It is a breach of clause 4.6 of the Funding Agreement not to have regard to such guidance.

Internal control

32. An EFA review of Nexus invoices across 2013/14 and 2014/15 confirmed there was no formal documented check on Nexus invoices to determine whether goods and services were delivered, amounts were accurate and charges were correct. The EFA requested access to subcontractor invoices which make up Nexus invoices submitted to the trust. The trust was unable to provide all subcontractor invoices and academy staff confirmed the academy does not routinely obtain underlying sub-contractor invoices behind the Nexus invoices it receives. Failure to have appropriate internal control arrangements in place increases the risk of fraud and/or irregularity occurring and is a **breach of the AFH 2014 and 2015 paragraph 4.8.1** which requires the trust to address this risk through their internal control and assurance arrangements.

33. Nexus procures goods and services for the academy and produces its own invoices confirming the costs incurred. Without access to underlying invoices it would be extremely difficult for the trust to provide assurance the costs it is paying are correct and accurate. It is acknowledged that some Nexus invoices show written workings by the finance team who also indicated they do attempt to physically verify goods and services

where possible. Additionally, some Nexus invoices bore the Accounting Officer's signature which he advised was to confirm the invoice was ready to be paid. However, no documented procedures were available to confirm what the Accounting Officer check should cover. Failure to provide assurance of high standards of probity in the management of public funds is a breach of the AFH 2014 paragraph 1.5.21/AFH 2015 paragraph 1.5.19 by the Accounting Officer.

Safeguarding

34. Without a written contract with Nexus to aid legal enforcement of delivery and no routine documented checks on goods and services delivered, there is a significant risk that regular health and safety services provided by Nexus may not meet statutory requirements. This represents a **potential breach of part 3 of the schedule to the Education (Independent School Standards) Regulations 2014 (SI 2014/3283)**.

Conclusion

35. The EFA's review of relevant financial and governance documentation has identified evidence to substantiate allegation 1.1. Evidence confirms that the Accounting Officer of Perry Beeches multi-academy trust is being paid for his services as the Chief Executive Officer (CEO) through Nexus and then Liam Nolan Ltd, in addition to his salary as Executive Headteacher. The arrangement was approved by directors of the trust and represents a **breach of the AFH 2014 paragraph 3.1.22** which requires trusts to comply with HM Treasury's guidance about the employment and contract arrangements of individuals on the avoidance of tax.

36. Additionally, review work has identified a number of significant control failures and weaknesses within the trust's financial management and governance arrangements. In particular:

- failure by the trustees and Accounting Officer to maintain proper stewardship over public funds
- breach of trustee statutory duties as company directors, to avoid conflicts of interest
- failure to ensure value for money over the use of public funds
- potential breach of Education (Independent School Standards) Regulations 2014 (SI 2014/3283)

37. Urgent action is required to strengthen governance, financial procedures and management arrangements and ensure trustees fully understand their obligations as company directors and charity trustees.

38. A detailed list of findings is included at Appendix A.

Appendix A – list of findings

| Ref | Finding | Issue |
|-----|---|--|
| 1 | <p>Payments to Nexus (a third party supplier to the trust) for provision of chief executive services. Nexus then passes this payment onto Liam Nolan Ltd, whose sole director is the Accounting Officer.</p> | <p>Breach of the AFH 2014 and 2015 paragraph 3.1.22 “Academy Trusts must ensure that their senior employees’ payroll arrangements fully meet their tax obligations and comply with HM Treasury’s guidance about the employment and contract arrangements of individuals on the avoidance of tax, as set out in HM Treasury’s Review of the Tax Arrangements of Public Sector Appointees. Failure to comply with these requirements can result in a fine by HM Treasury.”</p> |
| 2 | <p>A review of HR and governance documentation identified directors of the trust have approved the CEO payment arrangement at regular intervals, specifically September 2012, April 2013 and March 2015. It was also noted all invoices for consultancy, which include the CEO salary, are invoiced and paid upfront before service has been delivered.</p> | <p>Breach of the AFH 2014 and 2015 paragraph 1.5.11 “The board of trustees of the academy trust has wide responsibilities under statute, regulations and the funding agreement. Principally, it is responsible for ensuring that the Trust’s funds are used only in accordance with the law, its articles of association, its funding agreement and this handbook. The board of trustees has wide discretion over its use of the trust’s funds, which it must discharge reasonably and in a way that commands broad public support. It is responsible for the proper stewardship of those funds, including regularity and propriety, and for ensuring economy, efficiency and effectiveness in their use – the three key elements of value for money.”</p> <p>Breach of the AFH 2014 and 2015 paragraph 1.5.13 “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:</p> <ul style="list-style-type: none"> • act within their powers • promote the success of the company |

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| | | <ul style="list-style-type: none"> • exercise independent judgement • exercise reasonable care, skill and diligence • avoid conflicts of interest • not to accept benefits from third parties • declare interest in proposed transactions or arrangements <p>These duties are especially relevant when entering into transactions with connected parties.</p> |
| 3 | <p>The payments made to the Accounting Officer through Nexus and Liam Nolan Ltd, for CEO services are not disclosed in the 2013/14 financial statements.</p> | <p>Failure to comply with the Charities Commission SORP 2005 Section 230 “Unlike in the case of the directors of commercial companies, it is not the normal practice for charity trustees, or people connected with them, to receive remuneration, or other benefits, from the charities for which they are responsible, or from institutions connected with those charities. Detailed disclosures of remuneration and benefits are therefore required where the related party is a charity trustee, or a person connected with a charity trustee.”</p> <p>Failure to comply with the Academies Accounts Direction paragraph 7.6.1 “Accounting standards require material transactions with related parties to be disclosed in accounts so that users of the accounts can gain a full understanding of them, and of issues that might have influenced them. Disclosure provides accountability and transparency to the public and demonstrates that potential conflicts of interest are being identified and reported.”</p> |

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| 4 | The trust does not have a contract with Nexus for good and services provided, despite spending £1,297,712 over the 2013/14 and 2014/15 academic years. | Breach of the AFH 2014 and 2015 paragraph 1.5.11 as set out in finding 2 above. |
| 5 | The trust does not have an adequately detailed tendering policy, which could be used as a basis for demonstrating value for money and adherence to procurement regulations. | <p>Breach of the AFH 2014 and 2015 paragraph 3.1.3 “Academy trusts must ensure that:</p> <ul style="list-style-type: none"> • spending has been for the purpose intended and there is probity in the use of public funds • spending decisions represent value for money, and are justified as such • internal delegation levels exist and are applied within the trust • a competitive tendering policy is in place and applied, and Official Journal of the European Union (OJEU) procurement thresholds are observed • relevant professional advice is obtained where appropriate, including that of their external auditor where necessary |
| 6 | The trust has not appropriately managed conflicts of interest around the use of Nexus. | <p>Breach of AFH 2014 and 2015 section 3.1.11 et seq “Academy trusts must be even-handed in their relationships with connected parties by ensuring that:</p> <ul style="list-style-type: none"> • 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 • all members, trustees, local governors of academies within a Trust, and senior employees have completed the register of interests retained by the trust, in accordance with sections 3.1.16 to 3.1.19 of this handbook, and there are measures |

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| | | <p>in place to manage any conflicts of interest</p> <ul style="list-style-type: none"> • no member, trustee, local governor, employee or related individual or organisation uses their connection to the trust for personal gain, including payment under terms that are preferential to those that would be offered to an individual or organisation with no connection to the Trust • there are no payments to any trustee by the Trust unless such payments are permitted by the articles, or by express authority from the Charity Commission and comply with the terms of any relevant agreement entered into with the Secretary of State. Trusts will in particular need to consider these obligations where payments are made to other business entities who employ the trustee, are owned by the trustee, or in which the trustee holds a controlling interest • the Charity Commission’s prior approval is obtained where the Trust believes a significant advantage exists in paying a trustee for acting as a trustee • any payment provided to the persons referred to in section 3.2.2 satisfies the ‘at cost’ requirements in this handbook • The Trust should be aware of the Charity Commission’s guidance for trustees CC11: Trustee expenses and payments. <p>3.1.13 The board of trustees must ensure that the requirements for managing connected party transactions are applied across the Trust. The chair of the board of trustees and the Accounting Officer must ensure that their capacity to control and influence does not conflict with these requirements. They must manage personal relationships with connected parties to avoid both real and perceived conflicts of interest, promoting integrity and openness in accordance with the seven principles of public life.</p> |
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| | | <p>3.1.14 Trusts must recognise that some relationships with connected parties may attract greater public scrutiny, such as:</p> <ul style="list-style-type: none">• transactions with individuals in a position of control and influence, including the chair of the board of trustees and Accounting Officer• payments to commercial organisations which have a profit motive, as opposed to those in the voluntary sector• relationships with external auditors that go beyond their duty to deliver a statutory audit <p>The Trust must maintain sufficient records, and make sufficient disclosures in their annual accounts, to evidence that transactions with these parties, and all other connected parties, have been conducted in accordance with the high standards of accountability and transparency required within the public sector.</p> <p>3.1.15 Trusts must seek the EFA's prior approval for transactions with connected parties that are novel and/or contentious. Trusts should carefully consider the impact of this requirement and its relevance to transactions involving the chair of the board of trustees and the Accounting Officer.</p> <p>Breach of a trustee's duty to avoid conflicts of interests as referred to in Charity Commission Trustees Guidance: The essential trustee: what you need to know, what you need to do (Section 6.2) "You can only comply with your duty to act in the charity's best interests if you prevent your personal interests from conflicting (or appearing to conflict) with the best interests of the charity. This means recognising and dealing with conflicts of interest.</p> |
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| | | <p>A conflict of interest is any situation where your personal interests could, or could appear to, prevent you from making a decision only in the charity’s best interests. For example, if you (or a person connected to you, such as a close relative, business partner or company):</p> <ul style="list-style-type: none"> • receive payment from the charity for goods or services, or as an employee. <p>Failure of the trust to comply with their statutory duties as company directors as set out in the Companies Act 2006 Section 175 (1) “A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.”</p> <p>Breach of the AFH 2014 and 2015 paragraph 1.5.13 As set out in finding 2 above.</p> |
| 7 | <p>The CoG has joint business interests with a director of Nexus. A review of declarations of interest confirmed the CoG did not disclose these on the latest (2014) annual declaration.</p> | <p>Breach of the requirements in AFH 2014 and 2015 3.1.17: “The academy trust’s register of interests must capture relevant business and pecuniary interests of members, trustees, local governors of academies within a Trust and senior employees, including:</p> <ul style="list-style-type: none"> • directorships, partnerships and employments with businesses that provide goods or services to the Trust; • trusteeships and governorships including at other educational institutions and charities irrespective of whether there is a trading relationship with the trust” <p>Breach of the requirements in AFH 2014 3.1.18/AFH 2015 3.1.19 “Trusts should consider carefully whether to include the interests of other individuals in the register of interests. This may include other employees of the Trust and close family members of individuals already on the register. Interests are not limited to the items in section 3.1.17 and Trusts should consider whether other interests should be</p> |

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| | | registered. If in doubt the presumption should be towards including an interest in the register.” |
| 8 | No disclosure around an interest in Nexus was made in the Accounting Officer’s latest (2014) annual declaration of interest. | <p>Breach of the AFH 2014 and 2015 3.1.17 “The academy trust’s register of interests must capture relevant business and pecuniary interests of members, trustees, local governors of academies within a Trust and senior employees, including:</p> <ul style="list-style-type: none"> • directorships, partnerships and employments with businesses • trusteeships and governorships at other educational institutions and charities • for each interest: the name of the business; the nature of the business; the nature of the interest; and the date the interest began |
| 9 | The 2013/14 Trust financial statements do not include any related party disclosure for Nexus or disclosure around the monies paid through Nexus and Liam Nolan Ltd for the CEO position. | <p>Breach of AFH 2014 and 2015 paragraph 3.1.14 “Trusts must recognise that some relationships with connected parties may attract greater public scrutiny, such as:</p> <ul style="list-style-type: none"> • transactions with individuals in a position of control and influence, including the chair of the board of trustees and Accounting Officer • payments to commercial organisations which have a profit motive, as opposed to those in the voluntary sector • relationships with external auditors that go beyond their duty to deliver a statutory audit. <p>The Trust must maintain sufficient records, and make sufficient disclosures in their annual accounts, to evidence that transactions with these parties, and all other connected parties, have been conducted in accordance with the high standards of accountability and transparency required within the public sector.</p> |

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| 10 | The trust could not provide documented evidence to demonstrate value for money in relation to the £1,297,711 spent with Nexus. Specifically, no evidence of a formal procurement exercise, including quotations and tendering, was available for expenditure with Nexus. | <p>Breach of the AFH 2014 and 2015 paragraph 1.5.11 as set out in finding 2 above.</p> <p>Failure to comply with the European and UK Procurement Regulations, specifically Public Contracts Directive 2014/24/EU and Statutory Instrument 2015 No.102.</p> |
| 11 | The trust was unable to provide all subcontractor invoices and academy staff confirmed the academy does not routinely obtain underlying sub-contractor invoices behind the Nexus invoices it receives. | <p>Breach of AFH paragraph 4.8.1 “Academy trusts must be aware of the risk of fraud, theft and/or irregularity occurring and, as far as possible, address this risk in their internal control and assurance arrangements by putting in place proportionate controls. Trusts must take appropriate action where fraud, theft and/or irregularity is suspected or identified.”</p> |
| 12 | Nexus procures goods and services for the academy and produces its own invoice confirming the costs incurred. Without access to underlying invoices it would be extremely difficult for the academy to confirm the costs it is paying are correct and accurate. | <p>Breach of AFH 2014 1.5.21/AFH 2015 1.5.19 by the Accounting Officer. “The role of Accounting Officer includes specific responsibilities for financial matters. It includes a personal responsibility to Parliament, and to EFA’s Accounting Officer, for the financial resources under the Trust’s control. Accounting Officers must be able to assure Parliament, and the public, of high standards of probity in the management of public funds, particularly:</p> <ul style="list-style-type: none"> • value for money – this is about achieving the best possible educational outcomes through the economic, efficient and effective use of resources. A key objective is to achieve value for money not only for the Trust but for taxpayers generally. • regularity – dealing with all items of income and expenditure in accordance |

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| | | <p>with legislation, the terms of the trust’s funding agreement and this handbook, and compliance with the trust’s internal procedures – this includes spending public money for the purposes intended by Parliament</p> <ul style="list-style-type: none"> • propriety – the requirement that expenditure and receipts should be dealt with in accordance with Parliament’s intentions and the principles of parliamentary control – this covers standards of conduct, behaviour and corporate governance. |
| 13 | <p>Without a contract with Nexus, to aid legal enforcement of delivery and no routine documented checks on goods and services delivered, there is a significant risk that regular health and safety services provided by Nexus may not meet statutory requirements.</p> | <p>Potential safeguarding breach of part 3 of the schedule to the Education (Independent School Standards) Regulations 2014 (SI 2014/3283) The standard in this paragraph is met if the proprietor ensures that relevant health and safety laws are complied with by the drawing up and effective implementation of a written health and safety policy.</p> |



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