



Education  
Funding  
Agency

# **Financial management and governance review**

**Academy Transformation Trust**

**March 2017**

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## Executive summary

1. In November 2016 the Education Funding Agency (EFA) received complaints regarding financial mismanagement and breaches of the Academies Financial Handbook (AFH) at Academy Transformation Trust (ATT). The EFA commissioned a financial management and governance (FMG) review between 5 and 8 December 2016.

2. On the 17 November, the EFA issued a letter to the trust confirming a review of financial management and governance would be conducted in December. The letter also confirmed the EFA's understanding that there were some proposed changes to the governance of the trust with a newly constituted board of trustees to be appointed. EFA requested that these changes be put on hold pending the review work. The EFA acknowledge that the trust welcomed the review and provided full support and cooperation with all requests made.

3. The EFA review identified a number of significant failings and weaknesses in governance arrangements that breach the AFH. Key findings of the review have confirmed:

- the trust is not following AFH guidance regarding adequacy of oversight and challenge at the trust. This is due to the lack of separation between members and trustees, insufficient financial expertise on the board and the Accounting Officer (AO) being a director as well as a founding member
- inadequate financial management in allowing trust reserves and certain individual academy financial positions to deteriorate significantly over three years, with further deterioration forecast for 2017/18 at the time of this review. This represents a failure of the personal responsibility on the AO for the financial resources under the trust's control
- the founding member / AO failed to manage the inherent conflict of interest when removing the trust chair as a director. This breaches the AFH and Managing Public Money
- the founding member / AO did not act within the spirit of the AFH, nor in a manner that would command broad public support, when he removed the trust chair as a director

## Background

4. At the time of the FMG review, ATT consisted of 22 schools composed of 10 primary, 11 secondary and one all through school. It employs 2000+ staff and serves around 12,500 pupils. The head office is located in central Birmingham and its schools are spread out across large geographical regions, including Suffolk, Norfolk, Essex and the Midlands. ATT is currently in discussion with the Department for Education (DfE) around rebrokerage of three of its Norfolk academies.
5. ATT governs through a trust board and an audit committee. The trust board is overseen by the trust members. There are currently seven directors and four members of the trust.
6. At different points in the 2015/16 academic year, the responsible chair and trust board, at that time, raised concerns around financial management and deficits at the ATT. This included the 14 July 2016 board meeting where an in year trust deficit of £3.5m was proposed for 2016/17 (reduced to a proposed deficit of £2.2m after adjustments). At this meeting, the chair confirmed (per minutes) break-even budgets were required and that any deficit budget presented by an academy would not be accepted by the board unless it was accompanied by a 12 month action plan to eliminate the deficit. Additionally the board discussed concerns regarding trust reserves running out in the next 18 months and the potential consequence of EFA issuing a financial notice to improve.
7. The trust audit committee on 13 September 2016 discussed (per minutes) concerns on the trusts budgetary position including a potential scenario of losing three Norfolk primary schools where the trust could be “bankrupt”. The chair also highlighted ATT budgets would not be in a position to be discussed in time for the 10 October board meeting. The trust board minutes for 10 October 2016 record discussion on budgets and reserves, again discussing the option of losing the three Norfolk schools, which would put the trust in financial difficulties.
8. The trust chair met with the AO on 27 October 2016 placing him on temporary leave, due to significant concerns about his performance and behaviour. These concerns were rebutted by the AO at the time.
9. On the 14 November 2016, the AO used his powers as founding member under paragraph 66 of the trust articles of association to remove the chair as a director. Removal of directorship also resulted in the chair ceasing to be a trust member and chair.
10. During the period 20 October to 24 November 2016, four further directors resigned. Between 14 November and 22 November 2016, the AO used his powers as founding member to appoint five directors.
11. On 15 November 2016, the EFA received complaints concerning potential financial mismanagement and breaches of the Academies Financial Handbook at ATT.

12. EFA visited the trust between the 5 and 8 December to undertake a review of financial management and governance. The work included review of documentation, email exchanges and onsite interviews with key staff and trustees. Initial findings were presented to the trust on 8 December.

13. Prior to the EFA visit the new chair of the board confirmed an independent investigation into the allegations made by the previous chair against the AO, had been initiated. Board meeting minutes of 21 November 2016 confirm directors agreeing to undertake an investigation. The investigation was conducted by an external HR consultant and a management investigation report of findings was made available to the EFA on 16 January 2017.

## Objectives and scope

14. The objective of the review was to seek assurances regarding financial regularity and the trust's compliance with relevant frameworks, including the Academies Financial Handbook, its Funding Agreement and Articles of Association.

15. The scope of the review was to assess the financial controls and management within the trust; the adequacy and effectiveness of governance, risk management and control, including propriety, regularity, and value for money. The visit included a review of the following areas:

- all relevant trust policies and procedures, particularly those pertinent to financial management and financial controls, including the financial procedures manual, scheme of delegation and staff policies
- relevant trust information, including the Funding Agreement, Governing Body and relevant Committee minutes and financial management information

## Findings

16. Findings from the review identified a number of specific governance issues, including inadequate oversight and challenge, trust capability issues and inadequate financial management. All identified issues will need to be addressed to ensure there is a sufficient framework of internal control to manage the trust moving forward.

### Oversight and challenge

17. The historical set up of the trust has allowed a member to also be a director and an employee (CEO/AO), since incorporation in 2012. In addition, prior to November 2015, all members have been trustees / directors (for the purposes of this report the terms trustee and director are used interchangeably). The AFH 2016 states “Governance structures in which members are also employees are not considered by DfE to be best practice.”

18. The AFH 2014, 2015 and 2016 all state, “While members can be trustees, retaining some distinction between the two layers ensures that members, independent of trustees, provide oversight and challenge. This is especially important in multi-academy trusts in which trustees are responsible for a number of academies.”

19. The trust has also routinely had less than five members. The AFH 2014, 2015 and 2016 all state “DfE encourages trusts to have at least five members.” Additionally, the trust has only had one AGM in four years, contrary to its articles (para 19). By not ensuring adequate separation between governance layers and sufficient member numbers, the trust is not following best practice guidelines set out in the AFH and have not been able to fully demonstrate adequate oversight and challenge.

20. Review of the trust board financial skillsets since July 2015 identified two directors had an accountancy level qualification or equivalent experience. One resigned 22 March 2016 and the other was appointed 8 August 2016 and resigned 15 November 2016, attending only one board meeting.

21. During the periods 22 March to 8 August 2016 and 15 November 2016 to date, the trust did not have any directors (or members) with an accountancy level qualification or equivalent experience to advise on significant financial decisions. Review of trust board minutes from July 2015 to December 2016 confirm a total of ten board meetings were held, all with regular detailed discussions on MAT finances, and key decisions made with significant financial components. Only two of these meetings were attended by a director with an accountancy level qualification or equivalent experience.

22. Similarly, review of trust audit committee minutes from July 2015 to December 2016 confirm a total of six committee meetings were held, all with regular detailed discussions on MAT finances, and key decisions made with significant financial components. Only three of these meetings were attended by a director with an

accountancy level qualification or equivalent experience. A two page skills audit conducted by the board in early 2016 included very minimal reference to finance.

23. Review of the trust central finance function identified the chief financial officer (CFO) is a qualified accountant but not a permanent employee (contractor). The trust has no other staff in its central function who are qualified accountants, including the trust Director of Resources (DoR), who is recorded as the chief financial officer on Edubase. The AFH s2.1.11 states 'The trust's finance staff must be appropriately qualified and/or experienced'. While there is no prescribed requirement for accountancy qualifications in the AFH, a lack of permanent staff with accountancy level financial qualifications in a MAT responsible for a total 2015/16 funding of £78.4m represents a significant risk for the trust. This increases the chances of poor financial decisions being made and not challenged or scrutinised adequately.

24. The audit committee is currently composed of three directors, who are all members of the trust board. In addition, the chair is also the board chair. This potentially breaches the AFH 2015 and 2016 s2.4, which confirm that audit committee functions should be established in such a way as to achieve internal scrutiny that delivers objective and independent assurance. Using the same directors on the audit committee and trust board means it is difficult for the audit committee to independently scrutinise board decisions.

25. Failure to ensure adequate oversight is a breach of the AFH s2.1, which confirms trustees, and managers must have the skills, knowledge and experience to run the academy trust.

## **Financial management**

26. Based on data provided by the trust in December 2016, its revenue reserves have deteriorated significantly since September 2014, from £5.01m to a forecast (information provided at the time of our visit) of £26k at September 2018. Reported in year losses for 14/15 and 15/16 are -£1,352k and -1,238k, however after adjusting for the effect of reserves from new joiner academies, the actual in year loss is significantly higher. The reserves forecasts for 16/17 and 17/18 are well below any prudent reserve thresholds and also well below the reserves threshold set by the previous trust board of £1.25m (as confirmed in the 2014/15 trust financial statements p13). See table 1 below for details.



Table 1: Academy Transformation Trust's financial position (based on most likely scenario presented in December 2016 by the Finance Director)

<b>Academic year</b>	<b>2013/14 (actuals)</b>	<b>2014/15 (actuals)</b>	<b>2015/16 (actuals)</b>	<b>2016/17 (forecasts)</b>	<b>2017/18 (forecasts)</b>
Revenue reserves at end of year £k	5,010	3,658	2,420	197	26
In year gain / loss £k	128	-1,352	-1,238	-2,223	-171
Actual in year loss (after removal of new joiner reserves) £k	-	-1,994	-2,322	-	-

27. Following this forecast, the trust is taking steps to improve its forecast financial position. Nevertheless, the trust's finances have deteriorated significantly over the previous three years. This deterioration appears to have been caused, at least in part, by

- inadequate financial management of individual academies whose original deficit positions have been allowed to deteriorate over many years
- a significant increase in head office / central costs. This is in part due to early overstaffing to address planned growth in number of academies which did not materialise, and also loss making academies unable to pay central cost contributions
- poor management of lagged funding methodology (which the vast majority of academies operate on)

28. Based on financial data provided by the trust during the visit, our review identified a number of academies / cost centres where deficits had not been addressed in a timely manner. See table 2 for further detail.

Table 2: Academy Transformation Trust's academies / cost centres with deficits

	<b>2013/14 (revenue reserves at year end) £k</b>	<b>2014/15 (revenue reserves at year end) £k</b>	<b>2015/16 (revenue reserves at year end) £k</b>
ATT Head office	35	167	-440
Dukeries	-65	-597	-1370
Nicholas Hammond	-267	-637	-1134

	<b>2013/14 (revenue reserves at year end) £k</b>	<b>2014/15 (revenue reserves at year end) £k</b>	<b>2015/16 (revenue reserves at year end) £k</b>
Iceni	234	-131	-601
Ravens	130	-40	-164
FE provision	-	-	-352

29. During the visit, the AO confirmed all academies with deficits had been placed on three year recovery plans from September 2016. This is contrary to the steer from the previous trust chair who stated the board's position that individual academy deficit budgets should not be accepted unless recovery is forecast within 12 months (per July 2016 board minutes).

30. The trust's future financial position was further threatened by a strategy to rebroker three Norfolk primary schools to another trust. The loss of reserves at these three schools could put the trust into financial difficulties. An option of rebrokering two additional schools with deficits to offset this loss was declined by the trust, on the basis of the income they generated. The September 2016 audit committee minutes confirm discussion about the financial impact of losing the three academies "could bankrupt the organisation." Despite this reservation, the AO met with the Regional School Commissioner (East of England and North East London) in December 2016 and agreed to rebroker the three Norfolk Primary schools. The AO was in discussion with the EFA during this time regarding actions to help mitigate risks to the trust's finances which, as noted above, had deteriorated significantly over the previous three years. Relevant sections of the AFH relating to the above issue are:

- S1.5.11 of the AFH 2016 states the board of trustees is responsible for the proper stewardship of trust funds and for ensuring economy, efficiency and effectiveness
- S1.5.13 of the AFH 2016 states the board of trustees must understand their statutory duties as company directors as set out in the Companies Act 2006. These include the duty to exercise reasonable care, skill and diligence
- S1.5.20 of the AFH 2016 states 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

31. Allowing individual academies to run deteriorating deficit positions for three years and then allowing a further 3 years for recovery does not represent proper stewardship over trust funds and contravenes the key sections of the AFH.

## Changes in board membership between October and December 2016

32. The trust chair met individually with the AO on 27 October 2016 placing him on temporary leave. The AO subsequently informed the Regional School Commissioner (East of England and North East London) on 10 November of his intention and reasons to invoke his powers as founding member, under paragraph 66 of the trust articles of association, to remove the chair as a director. The Regional School Commissioner (RSC) advised this was a matter for the trust.

33. On 14 November 2016 the founding member / AO removed the chair as a director. Removal of directorship also meant the chair ceased to be a trust member and chair of directors. The AFH 2016 s1.4.1 states academy trusts must take full control of their financial affairs and apply the letter and the spirit of this handbook. Removal of the chair in this manner is not considered in accordance with the spirit of the AFH or in a way that would command broad public support.

34. Owing to his position in the trust as a director, the accounting officer was inherently conflicted during this time. The AFH 2016 s1.5.13 states the board of trustees must understand their statutory duties as company directors as set out in the Companies Act. This includes a duty to avoid conflicts of interest.

35. Managing public money (MPM) 2013 s3.7.1 includes a section when an accounting officer is facing an actual or potential conflict of interest. MPM states possible ways of managing conflicts of interest include:

- for a minor conflict, declaring the conflict and arranging for someone other than the accounting officer to make a decision on the issue(s) in question
- for a significant but temporary conflict, inviting the Treasury (or the sponsor department, as the case may be) to appoint an interim accounting officer for the period of the conflict of interest; or
- for serious and lasting conflicts, resignation

36. No evidence was available to suggest the AO managed the significant conflict of interest using any of the above options or any other reasonable alternatives.

37. The AO contacted the RSC (East of England and North East London) to provide an update on the developing situation on 22 November stating, “there is little validity in any of the claims made by the previous Chairman. The Trustee investigating group will report to Trustees at the next Board meeting, which takes place on 13 December.” However, there was no robust and independent evidence at this point to support the AO’s assertion on 22 November of “little validity”.

## New board decision making

38. The founding member / AO appointed four new directors, one of whom was appointed by the board as the chair on 21 November. The directors were not recruited through an independent means e.g. academy ambassadors. Whilst this is permitted by the trust articles, independently recruited directors would have allowed the trust to better demonstrate decisions surrounding the AO were impartial. In addition, no evidence was available to suggest these directors had been recruited to fill specific financial skills gaps as none hold an accountancy qualification or equivalent experience.

39. EFA wrote to the trust on 17 November notifying them of the FMG review, and asking that “proposed changes to governance of the trust with a newly constituted board to be appointed” be put on hold. This was received by ATT after the new directors had been appointed by the founding member / AO but before decisions had been taken on how the new board would operate.

40. Per agreed minutes, the new trust board met on 21 November and agreed a number of actions including:

- appointing a new chair and vice chair
- lifting the temporary leave and reinstatement of the AO
- confirming support for removal of the previous chair
- agreeing a 1% salary increase for the AO, in line with the annual increase already awarded to ATT staff
- appointing members of the audit committee, including a chair

41. Minutes of 21 November state, “(The chair) could not see any substance to support the significant action taken by the previous trustees, there may well have been differences of opinion but these should be dealt with at routine level, not through temporary leave of the CEO. (The chair) suggested that if all were of the same mind then the temporary leave should be lifted and the CEO reinstated. Trustees unanimously voted for the lifting of the temporary leave and reinstatement.”

42. Interview with the new chair confirmed his decision was based on a review of legal correspondence between the founding member/AO and previous chair, and discussions with the CEO and trustees. The new chair also confirmed that the AO’s reinstatement was conditional on the outcomes of the independent investigation.

43. No evidence was available to indicate the board and new chair used an independent and robust analysis of the accusations against the AO (including a detailed financial and governance review) before making their decisions on 21 November. In addition, minutes of 21 November and the 22 November update provided by the AO to the RSC (East of England and North East London) include no mention of the reinstatement being conditional on the outcomes of the internal investigation.

44. Without evidence of a sound basis for decision making, the trust board is unable to fully demonstrate proper stewardship, and acting in a manner that would command broad public support.

45. The trust provided a management investigation report to the EFA on 16 January 2017 which the EFA reviewed and provided comments on. The trust has since commissioned a wider financial review and the EFA will respond formally to the trust when this second review has been completed.

## Conclusion

46. Following concerns raised with the EFA with regard to ATT a review of financial management and governance was undertaken.

47. Our work onsite identified poor oversight / challenge structures, and inadequate financial management at the trust, which led to a significant reduction in trust reserves, with financial difficulties forecast. The board and chair acted to address the financial situation in part through a change in leadership however, this was resisted by the founding member / AO. A number of significant breaches with applicable governance frameworks were identified (AFH /MPM) from this review, along with actions not considered in the spirit of the AFH. These issues need to be urgently addressed to ensure internal control arrangements within the trust are operating effectively and assure proper stewardship over public funds.

48. The trust must undertake an independent review of governance arrangements, including the issues highlighted during our work and confirm in an action plan to the EFA how the required improvements will be managed.



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