



Education
Funding
Agency

Education Funding Agency
Sanctuary Buildings
Great Smith Street
Westminster
London SW1P 3BT

Tel: 0370 000 2288

Email enquiry form:

www.education.gov.uk/help/contactus

Date: 24 November 2014]

██████████ ██████████ ██████████
Durham Free School Limited
Bradford Crescent
Gilesgate
Durham
DH1 1HN

Dear ██████████ ██████████

Financial Notice to Improve (“The Notice”)

I am writing to you in your capacity as ██████████ of Durham Free School Limited (the Trust).

██████████ wrote to you on 4 November to explain that the Department had received an allegation in relation to the effectiveness of governance arrangements at Durham Free School, and that she was initiating work to review the allegation. This review took place between Monday 10 November and Wednesday 12 November 2014. In the course of the review, a number of breaches of the Academies Financial Handbook (AFH – September 2014) and Funding Agreement were identified. This letter and its annexes set out the significant issues concerning financial management, control and governance that were found. The letter and its annexes consequently serve also as a written notice to the Trust to improve financial management, control and governance.

Upon receipt of this Notice, all of the delegated authorities as identified in the AFH will be revoked, and all transactions by your academy trust previously covered by these delegations (regardless of size) must come to the EFA for approval. These delegated authorities shall be returned to the academy trust providing that the terms set out in this Notice have been complied with and continue to be complied with, to the satisfaction of the Secretary of State.

The Trust is required, pursuant to the provisions of the AFH and the Funding Agreement, to comply with the terms of this Notice. These terms are set out in Annex A and summarised in Annex B. We will monitor progress made towards meeting the requirements associated with this Notice. We will lift the Notice when the requirements set out in the Annexes have been met.

In the event that the Trust fails to meet the requirements of this Notice, to the satisfaction of the Secretary of State, the Trust will be considered to have failed to comply with the terms of the AFH, which all academies must comply with by virtue of the terms of the Funding Agreement. As a result of this breach of the AFH, and therefore also of the Funding Agreement, the termination process in the Funding Agreement may be triggered. Depending upon the severity of the breach, this may

be considered a material breach of the terms of the funding agreement and lead to the termination of the Funding Agreement.

I should be grateful if you would acknowledge receipt of this letter by email and within three days of the date of this letter to [REDACTED]. Please send me your formal response to these findings and a complete action plan to meet the requirements associated with this Notice by 19 December 2014

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sue Baldwin'. The signature is fluid and cursive, with the first name 'Sue' written in a larger, more prominent script than the last name 'Baldwin'.

Sue Baldwin
Director : Academies and Maintained Schools

Durham Free School Limited

Ref: DFS Limited 2014

Conditions

1. The Education Funding Agency (EFA) has decided to issue a Financial Notice to Improve (the 'Notice') as a consequence of the significant weaknesses in financial management and governance highlighted during an EFA review in November 2014. This includes breaches of the Academies Financial Handbook, the Funding Agreement and the Companies Act 2006.
2. The Trust is required to prepare and implement an action plan to address the underlying weaknesses in financial management and governance and ensure it is compliant with prevailing legislation, including:

Governance

- The Trust must resolve the breaches of the Articles of Association regarding composition of governors to ensure that the staff governor is elected and the number of parent governors increases.
- The Trust must ensure that the Department is notified immediately of any changes in the make-up of its governance structure, and that information held at Companies House is current and accurate at all times.
- The Trust must review its recruitment policy and associated procedures. It must ensure that proper and complete employment records are maintained and that policies and procedures are fully compliant with current legislation.
- The Trust should ensure that it is operating openly and transparently, with proper records of discussions and decisions being maintained.
- The Trust must ensure that all DBS checks are properly completed.
- The Trust must recognise, manage and track present and future risks arising from its operations, including a likelihood and impact assessment. The Trust should maintain a risk register.

Financial Controls

- The Trust must establish a separate Audit Committee, or another means of providing this function, in accordance with the Academies Financial Handbook.
- The Trust must ensure that the Audit Committee, or its equivalent, meets frequently, at least on a termly basis.

- The Trust must ensure that it is operating a system of robust financial management and internal control.
- The Trust must ensure that the accounting officer has proper oversight of financial transactions, and that they are a fit and suitable person for the role, able to fulfil their personal responsibility to Parliament and to the EFA's accounting officer for the financial resources under the trust's control.
- The Trust must ensure that it is complying with requirements to submit financial returns to the EFA including the Budget Forecast Return and audited financial statement of accounts by the prescribed deadline.

Supplier / Professional Services

- The Trust should ensure that all bought-in services are market tested for best value.
- The Trust must ensure that a competitive tendering policy is in place and applied to all bought-in services.

Timescales

3. The Trust will need to develop an action plan setting out a full set of actions to address the weaknesses in its financial management and governance arrangements that have led to the issue of this Notice. Within this action plan, timescales must reflect the severity of the issues listed above. The final plan must be submitted to [REDACTED] by 19 December 2014.
4. We would expect the final plan to set out clear milestones and monitoring towards all underpinning systems and processes being fully operational.

Monitoring and Progress

5. The Trust should supply the EFA with monthly progress reports on the work undertaken and the improvements and outcomes achieved. The EFA will arrange a follow-up visit to the school to confirm that the above recommendations have been implemented to the EFA's satisfaction. Please note however that the Trust:
 - is responsible for its own financial management, control and governance and is expected to take appropriate action to strengthen the control weaknesses identified;
 - should take all appropriate actions to ensure the agreed action plan is fully implemented; and
 - must contact the EFA at an early stage if it believes that performance is falling behind the schedule set out in the action plan.

6. The EFA must be satisfied that the Trust is rectifying the weaknesses identified. Should it become evident that the Trust is unlikely to fulfil the conditions of this Notice within the above timescales the EFA will begin to consider and explore the contractual intervention options available.

Compliance and the End of the Notice Period

7. Compliance with this Notice will be demonstrated when all measures set out in the action plan have been implemented and the EFA is able to validate, by visiting the Trust to conduct testing as appropriate, that the new arrangements are fully embedded. When the EFA is satisfied that the Trust meets the conditions outlined in this Notice, the Notice will no longer apply. At this point the EFA will write to the Trust again to confirm the Notice has been lifted.

Specific Actions Required of the Trustees

Annex B

The Trustees must ensure that all the issues raised in the EFA's review relating to significant breaches of the Academies Financial Handbook, the Funding Agreement and Companies Act 2006 are addressed.

The action plan detailed in Annex A will need to fully address the following issues and itemise the specific actions proposed. Specific issues relating to Trustees are:

Governance and leadership

Given the breaches identified, review whether the Accounting Officer, Trustees, Chair of Governors and the Company Secretary have the qualifications, skills and abilities to carry out their roles effectively and replace where required.

In particular, we would expect:

- A significant strengthening of the membership of the governing body.
- Clarity on the governance structure proposed going forward, particularly how the different Trust Board and Governing Body will interact, the mix and skills of the respective members and the level at which decisions will be made.
- Specific detail on the proposed committee structure and how you plan to address the absence of the audit committee function.
- All previous changes to the GB to be notified immediately and all future changes to be notified as soon as they occur, within the 14 day limit.
- All DBS checks to be completed with immediate effect.
- An interim Accounting Officer in place for Durham Free School Limited with the right qualifications, skills and abilities.
- A new independent Clerk that reports to the Chair of Durham Free School Limited.
- Increased transparency in the operation of the GB to include record of discussion.

Supplier/professional services

Services are to be subject to proper procurement procedures. Quality of service and value for money should be monitored as a matter of course and followed up as required.

Specific Actions Required of the Accounting Officer

The Accounting Officer must address all the issues raised in the EFA's review relating to significant breaches of the Academies Financial Handbook, the Funding Agreement and Companies Act 2006.