



Department
for Education

Phoenix Family of Schools Academy Trust

Investigation report

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XDIAS Cross Departmental Internal Audit Service
Internal Audit Investigation Team, Department for Education

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Introduction

1. DfE's Internal Audit Investigation Team (IAIT) was contacted by a whistle-blower (WB) in relation to possible governance issues and financial irregularities at the Phoenix Family of Schools Academy Trust, Boston, Lincolnshire. The complaint was referred to the Education Funding Agency (EFA), who requested that IAIT contact the WB to gain further information. Following receipt of this information EFA requested that IAIT undertake an investigation into the alleged governance issues, financial irregularities and other issues raised by the WBs.

2. Terms of reference for the investigation were agreed with the EFA lead officer, [REDACTED]. The investigation was undertaken by [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

Background

3. The Phoenix Family of Schools Academy Trust (PFoSAT) was setup on 10 December 2012. The Trust comprises the following academies:

- Gosberton Primary School – opened 1 January 2013.
- Park Primary School opened – opened 1 January 2013.
- Fishtoft School – opened 1 February 2013.
- Boston Pioneer Free School Academy – opened 3 September 2013.

4. The Trust is due to open a new free school, Inspirar Bilingual Free School Academy, in Spalding in September 2014.

5. The CEO of the Trust is Carol Clare and the Chair of the Trust Board is Denzil Shephard. The academies have local advisory bodies, whose Chair is a member of the Trust Board.

Management summary

6. The Trust is currently being challenged by the lack of interest in members joining the Trust Board / Advisory Boards which has resulted in a small pool of non-executives having to be involved in a number of committees to ensure committees / meetings are quorate.

7. The open agenda item / emergency powers authority provided to the Chair without a definition on the limits of that power could be viewed as the Board's decision making authority being by-passed, with the risk that the Chair and CEO could pursue personal agendas.

8. The Trust is a developing organisation and maturity in a number of the financial areas is now improving following a number of internal audit reviews. This has

strengthened the understanding of the importance of financial accountability in the use of public funds. However we do have concerns that the procurement processes still need further clarification (in the Finance Manual) and understanding as the findings in relation to the engagement of a consultant detailed in the report cause concern.

9. In particular no quotes or tendering was undertaken which means that Trust cannot demonstrate value for money was obtained. As the consultant was also a director of the Trust for some of the period he was being paid this would need to be demonstrated. The consultant has, in a number of areas, been treated as a member of staff being provided with a laptop and having his DBS and BUPA paid by the Trust. The CEO stated that he was seen as a staff member. It is not clear whether the Trust Board understood the position of the individual as a consultant, as they approved his appointment as a staff governor and his BUPA payments. Treating consultants in this way could result in HMRC liabilities being accrued in relation to tax and national insurance (NI).

10. The need for additional financial expertise to deliver the necessary level of financial oversight that will be required by the Trust as it develops and expands is something that the Trust will need to consider in the future.

11. Allegations were also made that the CEO had suggested inflating forecast pupil numbers for a new free school they were developing, Inspirar Bilingual School. This allegation had already been made to the Trust, who had commissioned their HR support, Mouchel, to investigate the matter. The Mouchel report concluded that the CEO did suggest that the figures submitted to the Department be inflated to present a higher level of interest than had been evidenced through their initial promotional events. The Trust is in the process of convening a disciplinary hearing into the matter.

12. The Trust has subsequently obtained independent legal advice that the Mouchel report did not disclose evidence of wrongdoing in relation to the allegations on free school numbers.

Findings

Governance

13. The current governance structure for the Trust comprises:

- Two members of the Trust.
- The CEO.
- The Academy Improvement Director.
- Four Academy Advisory Body chairs.
- Two parent representatives.
- The Finance Director (FD) / Chief Finance Officer (CFO).

14. However currently the Trust only have two chairs of the academy Advisory Bodies (Gosberton and Fishtoft) as two of the chair posts are vacant (Park and Pioneers) and are being undertaken by the Chair of the Trust, although we were informed this is only a temporary situation. It does however mean that these two academies do not have any independent representation on the Trust Board.

15. With the lack of two Advisory Board representatives the Board is balanced 2:1 between non executives (six) and executives (three). With this Board of nine members, this is the minimum balance allowed by the Trust's Articles of Association, which states staff representatives should not be greater than a third of the Board.

16. The Board have recognised that they need further non-executive directors on the Trust Board and the Advisory Bodies, however due to their location and the fact that the academies are primaries they have had little interest from the local community in joining boards.

17. The small number of directors presents a challenge when resourcing the sub-committee structure put in place which comprises:

- Finance Committee.
- Audit Committee.
- Pay Committee.
- Performance Management Committee.
- Disciplinary Hearing Committee.

18. For 2013/14 this has resulted in the Chair being a member of all but one committee and the vice Chair being a member of all committees.

19. Of the seven Board and Extraordinary Board meetings held since the first two academies opened the Chair has been unable to attend two meetings and the vice Chair

has been unable to attend two meetings (not the same meetings). The Chair also stated that he was away on holiday for a period shortly after the first academies opened but cover was provided during this period by the vice Chair.

20. Terms of reference (TORs) exist for the Trust Board, Finance Committee, Head teacher's Performance Review Group and Local Advisory Bodies. The Chair also has the power to have "open agenda items" at the Trust Board, which we understand enables him to use emergency powers to make decisions needed at short notice in-between Board meetings and take the decision to the Board meeting. However what emergency powers can be used for and when they can be used has not been documented by the Trust which would ensure that the Chair and all directors understand the limits of the power.

21. The CFO whilst not an accountant does provide the Advisory Boards and Trust Board with finance information spread sheets based on agreed budgets and outcome spend against the budgets. The financial information for these reports is extracted from the SAP accounting package. We understand that the internal audit report has recommended that reports are extracted directly from SAP. The annual accounts are prepared by the Trusts external accountants.

Declaration of business interests / conflicts of interest

22. Declaration of business interest forms have been completed by all directors and members of the Senior Leadership Team (SLT), with those undertaking both roles (the CEO, CFO and Academy Improvement Director) completing two forms – the SLT form in September 2013 and the directors form in October 2013.

23. On the SLT form the CEO has declared that her husband has a company and her daughter is a teacher at an academy in the Trust, however these declarations were not made on the director's form. The CEO stated that this was an oversight. The CEO's husband's company did some work for the Trust in January 2013, the value was small (£108) and the CEO declared this at the start of the 28/01/13 Trust Board meeting.

Procurement and contracting

24. Little evidence was found of any procurements being undertaken by the Trust as many of the framework contracts / SLAs used when the schools were in LA control have been carried forward to the Trust. The Finance Manual does include details on procurements, including when formal tendering should take place. However there are contradictions in the manual where in some places it states a full tender is required if the procurement is over £50,000 and in other places the figure quoted for full tendering is £10,000. The CFO will review the manual to ensure consistency.

25. We were informed that when quotes are obtained these are attached to the invoice requesting payment for the work. However as more than one invoice may be received for the work we suggested that they are kept in separate file.

26. The Trust engaged a consultant, [REDACTED], from January to June 2013 to undertake the role of the Academy Improvement Director. For this period [REDACTED] (as [REDACTED]) was paid £11,490 plus expenses of £170.55 (a daily rate of £375). No tendering or quotes were obtained for this service prior to engaging [REDACTED]. The CEO knew [REDACTED] as he previously worked for CfBT providing the school improvement partner role for the LA. No contract exists for the services provided during this period and we understand [REDACTED] still undertakes consultancy work for the Trust (in 2013/14 we have seen payments totalling £1,120).

27. The status of [REDACTED] from January to June appears confused as, whilst he did not have a contract of employment and submitted invoices for his services, the CEO stated that he was seen as staff. During this period:

- He was provided with a laptop by the Trust – the CEO stated that this was to ensure that Trust data he worked on was secure. The laptop was returned to the Trust earlier in the year.
- His DBS check was paid for by the Trust.
- The Trust (with Board approval) paid for BUPA cover from 05/03/13 to 16/04/13 at a cost of £286.91, but £95.46 was reimbursed by [REDACTED] (for partner cover) leaving the cost to the Trust at £191.45.
- At 28/01/13 Board meeting [REDACTED] was appointed to the Board in the role of staff governor.

28. This situation could present financial liabilities if HMRC take the view that [REDACTED] was an employee of the Trust and required backdated tax and NI to be paid.

29. [REDACTED] was registered as a director of the Trust at Companies House during the period 11/12/12 to 24/04/13. Even though he was not a member of staff:

- He attended the Trust Board meetings on 28/01/13 (attending part way through) and 25/03/13 as a staff governor.
- He attended the Finance Committee meetings on 05/03/13 and 25/03/13 as a staff governor.

30. As no quotes or tendering for the services provided by [REDACTED] the Trust cannot demonstrate that it has received value for money, which is particularly important as at the time of providing some of these services [REDACTED] was also a director of the Trust. We have not seen any evidence to show whether the Trust Board were aware of and agreed the costs of [REDACTED] services.

31. [REDACTED] also attended the 15/10/13 Trust Board meeting as a guest, and the minutes record that there was a proposal for him to join the board. The

minutes state that “it was noted that he may be counted as a member of Trust Staff, and therefore not eligible to join the Board as there are already three staff members”. Following our visit to the Trust we have been informed that [REDACTED] [REDACTED] no longer wishes to join the Trust Board.

Finance manual and financial data

Expense Claims and Credit Card Usage

32. We reviewed expense claims, invoices, credit card statements and receipts and petty cash records from January 2013 to August 2013 and a sample from September 2013 to December 2013. In the early days of the Trust some expense claims were identified which were not signed by those claiming expenses, were not authorised and where receipts had not been provided. However over the period reviewed there has been an improvement in the details and information provided in support of expense claims (including more receipts being supplied) and in submitting receipts in support of credit card purchases. This improvement may be as a result of internal audit reviews that were undertaken and reported in May 2013 and September 2013.

33. Claims for meals are now restricted to the rates detailed in the Finance Manual and approved by the Finance Committee, which was not the case in the early days of the Trust. The Finance Committee have also agreed that credit cards should not be used for expense claims such as meals, which should be claimed using the expense claim form.

34. We identified a number of instances where the CEO and others paid for meals for other individuals and it was not always clear whether the other individuals were:

- Staff members, who should be claiming their own expenses.
- Directors, who should be claiming their own expenses.
- Individuals with no connection to the Trust, where entertainment was being provided.

35. As director expenses need to be declared in the annual financial statements it is possible that with the current practices the expense claims for the CEO will be overstated (as she is incurring costs for other staff / directors / entertainment cost) and those for other directors will be understated (as the CEO is incurring the costs). The Finance Manual also states that the CEO should maintain a record of occasions when hospitality is provided, the number of people involved and the costs incurred. This does not currently happen. We would also suggest that the Trust Board consider whether a separate account code should be established for entertainment and, possibly, a budget set so that the costs spent on entertainment are clearly identifiable to the Board.

Hotel rates

36. The Finance Manual states that the hotel rate SLT members can claim is £180 per night. This appears high, particularly for hotels outside of London, however the Finance Committee have agreed the rate.

Trust topslice

37. In discussing the budget and outturn for 2012/13 we were informed that the central Trust costs were in the region of £500,000 against income of approximately £3,000,000. This gives a topslice of just under 17%, which is very high. The Trust accountants are looking at how some of these costs may be more attributable to the academies rather than the Trust (eg the CEO's salary as she is effectively the Head of each academy).

Income generation clause

38. We identified a claim by the CFO of £250 for 25% of £1,000 income from the Swineshead Federation. When we asked about this claim we were referred to the Finance Manual, where section 11 on Income Generation, states that "the Directors agreed that Senior Leaders will be allowed to receive in their salaries a sum equivalent to 25% of any fees paid to the Trust earned by themselves as a result of consultancy/speaking arrangement". We have not come across a clause such as this in a Finance Manual before and would question whether staff were entitled to any payment if the work generating the income was undertaken in work time and whether intellectual property rights such as copyright would remain with the Trust.

Overseas trips

39. The only overseas visit we identified since the schools converted to academies was a visit to India. One of the academies, Park, is partnered with a school in Delhi and the Trust received a British Council grant for a teacher exchange visit from / to India. Indian teachers visited the school in June 2013 and the CEO and Academy Improvement Director visited India in September / October 2013. The costs of these visits were to be funded from the British Council grant of £3,000. However the total costs of the visits were as follows:

- Costs for Indian visitors – £2,153.14
- Costs for visit to India – £2,567.52

40. Giving a total cost of £4,720.66. At an extra-ordinary meeting of the Trust Board on 19/07/13 the costs of the visit to India were discussed, with costs estimated at £2,150 against a budget of £1,500. The Board agreed to fund the extra £600 for the visit. However it is not clear whether the Board were informed of the additional costs over the £2,150 agreed by the Board or the over spend on costs for the Indian visitors, where we are assuming the budget was £1,500, although these additional costs were agreed by the Chair (the CEO has provided emails to confirm this).

Possible irregular expenditure

41. When identified a number of payments that may be considered irregular:
- Proposed free school costs – although the CFO was clear that costs associated with the development of free schools could not be funded from EFA funding we identified some costs in expense claims and credit cards which had not been allocated to the free schools start-up grants. The costs identified (£3,863.32) will be re-allocated to the correct cost code.
 - The Trust put in a bid to run a new school for an LA (under an academy / free school presumption competition) and consultancy costs of £405 were incurred to submit the bid. These costs will have been funded from EFA funding.
 - We identified a small number of instances where payments had been made for alcohol. Some purchases were single glasses of wine, the highest amount was for two bottles of wine totalling £71 following the TES awards. The CEO stated that these had been purchased to celebrate the success of the Trust at the TES awards where members had been successful in winning a number of awards. Total costs on alcohol identified were £94.70. The Trust's Finance Manual states that the cost of alcohol cannot be claimed.
 - Costs in relation to [REDACTED] [REDACTED] for his DBS check and BUPA costs identified about (totalling £235.45).
 - The Trust paid £10 per head for the staff Christmas party (staff then paid £15 per head). This cost was not agreed by the Board however the Finance Manual (which was agreed by the Finance Committee) does state that directors have allocated £3,000 for "well-being expenditure" and we were informed these costs were funded from this budget.

Employment of relatives

42. The CEO's daughter is employed by the Trust as a teacher. The CEO declared at the 14/05/13 Trust Board meeting that her daughter had applied for a post at the new free school. The CEO also notified the Department that her daughter had applied and she took no part in the selection or interview process. One of the Department's Education Advisors attended the interviews as an observer and, following the interviews, confirmed appropriate process had been followed.

43. [REDACTED] [REDACTED] daughter is also employed as a teacher by the Trust and a review of her HR file demonstrated an appropriate recruitment process was followed.

Forecast pupil numbers for new Inspirar Bilingual Free School Academy

44. The Trust is due to open a new free school, Inspirar Bilingual Free School Academy, in September 2014. Concerns were raised about how the forecast pupil numbers for the school were arrived at, with allegations being made that the CEO had suggested inflating the forecast pupil numbers. This issue had already been raised with the Trust and the Chair had commissioned Mouchel, the Trust's HR support, to undertake an investigation. The findings of Mouchel's investigation have now been shared with the Trust.

45. The Mouchel report concluded that the CEO did suggest that the figures submitted to the Department be inflated to present a higher level of interest than had been evidenced through their initial promotional events. The Mouchel report also concluded that, by suggesting inflating the figures, the CEO had shown a lack of integrity which could have potentially damaged the reputation of the Trust and was not in line with the Trust Code of Conduct policy, which states that "staff must maintain the highest standards of honesty and integrity in their work". The Trust is in the process of convening a disciplinary hearing into the matter.

46. The Trust has subsequently obtained independent legal advice that the report did not disclose evidence of wrongdoing in relation to the allegations on free school numbers.

Recommendations

For the Trust

47. To prepare an action plan to inform EFA how issues identified above will be addressed.

For the EFA

48. To consider requesting External Assurance (EA) to schedule a financial management and governance review as the Trust has only been in operation for a year (so is relatively immature), is continuing to expand and we have identified problems with the areas we have reviewed as part of this investigation.

49. To consider whether to recover funds assessed as possible irregular payments.



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