



Education & Skills  
Funding Agency

# Investigation Report

**Westfield Academy**

**September 2018**

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## Executive summary

1. The Education and Skills Funding Agency (ESFA) received anonymous allegations on 3 August 2017 in relation to Westfield Academy. Further allegations were received on 30 August 2017, 1 September 2017 and 8 September 2017. The allegations related to a number of issues, including misuse of school funds and assets, non-compliance with procurement processes, potential related party transactions, ineffective contract management, poor value for money, abuse of position and lack of transparency surrounding financial information.

2. In response to the allegations, ESFA visited Westfield Academy from 3 to 6 October 2017. Owing to the number of allegations, interviewees and information needed, the visit was subsequently extended from 9 to 11 October 2017. During the opening meeting the Chair of Governors (CoG), Accounting Officer (AO) and Chief Finance Officer (CFO) were informed that the ESFA visit was a fact finding review but if any irregularity or non-compliance was evidenced the work would be escalated resulting in a publishable report under the ESFA policy guidance. This report reflects the level of concerns identified and escalation to a formal investigation review.

3. The documentary and interview evidence collected by the investigation team identified financial management and governance arrangements that breach the trust's Articles of Association, Funding Agreement and the Academies Financial Handbook (AFH) 2016. Key findings have identified the following:

- the trust's governance structure shows that the current number of members and signatories to its memorandum and articles of association is only 3. This arrangement is not in line with current best practice as confirmed in the AFH (page 6) as the Department recommends trusts to have at least 5 members wherever possible (para 18)
- all members are also trustees. The current structure contravenes the guidance set out in the AFH (page 7). "The Department's view is that the most robust governance structures will have a significant degree of separation between the individuals who are members and those who are trustees" (para 19)
- financial information is being withheld from the AO and decisions taken without his input, therefore limiting his ability to discharge his role as the AO (paras 23, 24)
- the CoG is acting beyond his powers, taking on executive responsibilities and approving payments without the appropriate authority. ESFA identified payments and contracts approved by the CoG that did not comply with the Scheme of Delegation or have the necessary trust board approval. This is also a potential breach of a director's duty under the Companies Act s.170-171 (paras 25)
- ESFA witnessed behaviour unbecoming and received allegations of harassment by a governor. Evidence from those interviewed, including emails

shows that the trust's policy on behaviour has not been complied with. The ESFA also observed the governor acting inappropriately towards a staff member during the investigation visit. (para 29)

- the same governor also attempted to circumvent trust financial controls by requesting payment be made to a contractor close to him without the necessary CFO approval (paras 30, 31)
- ESFA identified a potential safeguarding issue regarding a contractor (██████████) living in the staff bungalow. At the time of our visit no evidence of an enhanced certificate was provided by the trust. A basic disclosure dated 27 October 2017, after our visit, was subsequently provided by the trust (para 32,33)
- the CFO is in receipt of an annual £22,601.59 payment, referred to as an honorarium and approved by the CoG. The payment breaches the trust's pay and appraisal policy, does not have the necessary approval of the Governing Body or Resources Committee and exceeds the powers conveyed upon the CoG through the trust's Scheme of Delegation (paras 35, 36, 37, 39)
- the trust paid for a trustee's, ██████████ to undergo work experience with a contractor during ██████████ at a cost of £1,732.50. This was not disclosed on trustee individual declarations or on the trust 2015/16 financial statements (para 47)
- the trust purchased services from a relative of the CoG to the value of £800 during 2015/16. This was not disclosed on trustee individual declarations or on the trust 2015/16 financial statements (para 48)
- poor controls and potential irregularities were identified in relation to procurement of a sports therapy service. During 2016/17 the trust paid £42,003.50 for these services (para 55)
- value for money and potential irregularity issues were identified in relation to management of trust assets, including football tickets valued in excess of £4,000 and lack of appropriate leasing arrangements for the staff bungalow (paras 60, 64, 67)
- lack of sufficient scrutiny and challenge of contract management arrangements to ensure the trust is not subjected to unnecessary costs and is securing all relevant income owed. Particularly in relation to the failure to pursue monies owed to the trust from the ██████████ contract (paras 81,82)

4. Based on the evidence gathered to date, ESFA has recommended an independent review of financial management and governance to consider the issues identified and consider any further areas of concern. The independent review should result in an action plan and timeline for the trust to resolve all issues.

## Background

5. Westfield Academy is a mixed, secondary school and sixth form that converted to single academy trust status on 1 September 2013. The governing body comprises 3 members who are also directors and an additional 6 governors, including 3 staff governors. The Academy has a roll of approximately 995 pupils but capacity for 1,600 since the new build. Ofsted visited on 23 February 2016 and considered that the school to be rated 'Good'.

6. Westfield Academy was one of the successful applicants for round one of the Priority Schools Building Programme, announced in June 2012. It was part of a programme of seven schools across Hertfordshire, Reading and Luton, worth £135m; funding to support Westfield's new build was £20m. Construction was due to be completed by September 2016.

7. The ESFA received allegations during January 2014 and March 2014 regarding aspects of financial management and governance at Westfield Academy. The allegations related to appointments to senior positions, inappropriate use of pupil premium funding, conflicts of interest in the award of contracts and the payments of a service agreement.

8. ESFA visited the academy in June 2014 to conduct a review of financial management and governance. Whilst the review found some weaknesses in financial management and governance processes at the academy it did not find major concerns in respect of any of the allegations.

9. In March 2017, ESFA received allegations about school budgets not being used for their intended purpose and a performance bonus paid to a staff member. In particular, department budgets being reallocated to the new build project, resulting in an overspend. ESFA enquiries confirmed that build costs were paid directly to the suppliers by ESFA, whilst budgeting was the responsibility of the trust to manage. ESFA review of the trust's 2015/16 financial statements confirmed a healthy position with both an in-year and cumulative surplus.

10. ESFA also contacted the CoG to clarify the circumstances surrounding the allegations. The CoG confirmed:

- no purchases for the new build that were costed to any other academy budget
- the staff member had not received any pay rise or bonus in the last two years but had received a 2% one off payment in line with performance management reporting processes

11. As a result of the assurances provided by the CoG, including a detailed response to each allegation, the matter was closed for ESFA purposes. However, no disclosure or explanation of the honorarium payment made to the staff member was made in the assurances given to the ESFA by the CoG.

12. On 3 August, 30 August, 1 September and 8 September 2017 ESFA received further multiple allegations relating to financial management and governance concerns about Westfield Academy. As no supporting evidence was provided but issues were deemed significant ESFA commissioned a fact-finding visit, undertaken by qualified ESFA investigators to determine whether the allegations were founded. The visit took place over 4 days from 3 to 6 October and was extended by 3 days from 9 to 11 October 2017.

## Objectives and scope

13. The objective of the investigation was to seek assurance that the trust's financial management, internal controls and governance arrangements are compliant with the Academies Financial Handbook, Funding Agreement and wider regulatory framework. The testing performed was aimed at identifying if the allegations made by the complainant warranted further action by the ESFA as well as identifying potential weaknesses in the financial management and governance at the trust.

14. The scope of the review was to assess the financial controls and management within the trust; to assess the adequacy and effectiveness of governance, risk management and control, including propriety, regularity, and value for money. Work was undertaken in the following areas:

- all relevant trust policies and procedures, particularly those pertinent to financial management and financial controls, including the trust's
  - financial procedures handbook
  - scheme of delegation
- relevant trust information, including:
  - the Funding Agreement
  - governing body and all committee minutes
  - recruitment and payroll information
  - financial management information including bank statements and credit card statements
  - procurement documentation
  - adequacy of trustee oversight and challenge
- interviews with key senior management at the trust and the board of governors

15. The ESFA team reviewed a full range of documentation. In addition the team was presented with evidence by interviewees including paperwork related to the specific allegations. The team also interviewed staff from across the trust, including senior leaders.

16. At the time of writing this report ESFA are aware the Board had referred the matter to the police for separate investigation. This investigation has been concluded.

## Findings

17. Findings from the review identified a number of specific issues, including breaches of the trust's Articles of Association, Funding Agreement, non-compliance with the Academies Financial Handbook, significant weaknesses in governance arrangements and potential breaches of directors' duties under the Companies Act 2006.

## Governance

18. ESFA review of the trust's governance structure shows that the current number of members and signatories to its memorandum and articles of association is only 3. This arrangement is not in line with current best practice as confirmed in the AFH (page 6). The Department recommends trusts to have at least 5 members wherever possible, as this:

- provides for a more diverse range of perspectives to enable robust decision making and reduces the risks of concentrating power
- ensures members can take decisions via special resolution without requiring unanimity

19. All members are also trustees of the trust. The current structure where members are also directors is contrary to the guidance set out in the AFH (page 7). "The Department's view is that the most robust governance structures will have a significant degree of separation between the individuals who are members and those who are trustees. If members also sit on the board of trustees this may reduce the objectivity with which the members can exercise their powers. The Department's recommendation is for a majority of members to be independent of the board of trustees."

20. The previous investigation into irregularity at the trust in August 2014 noted that the academy operates under a 3 tier governance structure that is more common to a multi-academy trust (MAT), despite the academy being a single academy trust. A recommendation was made by ESFA at that time that the 3 tier structure be "reviewed to assess whether this structure is still appropriate in the context of Westfield's continuing status as a single academy trust". Current investigation work has confirmed no changes were made to bring the trust into line with recommended practice.

21. During interview, the CoG responded that the trust had taken advice and believed that they were compliant with their articles. Compliance with the articles notwithstanding, the trust's governance arrangements are not in line with the recommendations set out in the AFH (page 6).

22. A review of the trust governing body minutes of September 2016 states that 'as the Chair and Vice Chair are elected for 4 years, no election is due at this time'. Article 83 of the trust's articles states that the governors shall each year elect a Chair and Vice-



Chairman from among their number. By not electing a Chair and Vice Chair in 2016 and 2017, the trust has breached its Articles of Association.

23. During discussion, minuted by ESFA, the AO confirmed regular weekly meetings with the CoG and Chief Finance Officer (CFO). Evidence from the AO stated to ESFA that he was concerned that the CoG and CFO have made decisions without his input and that the CoG is taking on executive responsibilities, acting more as a Chief Executive Officer (CEO) than a Chair.

24. During interview, the Accounting Officer (AO) stated that he believes that financial information is being withheld from him, limiting his ability to discharge his role as the AO. This concern is supported by email correspondence seen by ESFA in relation to expenditure approved by the CoG on the football pitch and the agreement relating to the lease of the Business Centre that the AO was not made aware of.

25. ESFA interviews with two other governors relayed concerns that decisions are made prior to meetings and that these are presented to the board of governors without the opportunity for open and transparent discussion. ESFA identified payments made to staff agreed by the CoG without following trust procedures, including 10 invoices signed without delegated authority and 3 contracts agreed that did not have appropriate board approval. As a result, the CoG is acting outside his powers as a director and is therefore potentially breaching s.171 of the Companies Act 2006.

26. National College for Teaching and Leadership's publication 'Leading Governors The Role of the Chair of Governors' confirms "The chair plays a crucial role in setting the culture of the governing body and is first among equals, but has no individual power" (page3). Similarly, DfE's 'The Governance Handbook' (GH) January 2017, states that the chair "is responsible for ensuring the effective functioning of the board and has a vital role in setting the highest of expectations for professional standards of governance" (para 29).

27. Consequently, "the chair must not exercise as an individual any of the functions of the board except where this has been sanctioned by the board" (GH para 30). Where an academy trust board of governors decides, the chair is "permitted to act in cases of urgency where a delay in exercising the function would be likely to be seriously detrimental to the interests of the school". ESFA review of the trust's governing documents, including Articles of Association, Scheme of Delegation and Committee terms of reference convey no such emergency power on the CoG.

28. Subsequent to the ESFA visit, we were advised by the Chair of the Resources Committee that the CoG had cancelled a Resources Committee meeting scheduled for 9 November 2017. The meeting was cancelled without the agreement of the Chair of the Resources Committee. Following ESFA enquiry to confirm what powers the Chair had used to cancel the meeting the CoG did not advise under what specific authority the meeting was cancelled nor did he confirm whether he or the AO hold emergency cancellation power. The action taken is indicative of the CoG acting as an individual and

'beyond his powers' as highlighted above. The meeting was to include issues arising from the ESFA review and an opportunity to discuss more formally the financial findings amongst trustees. This did not happen owing to the CoG's intervention.

## Bullying and harassment

29. During the investigation, the [REDACTED], a governor, was witnessed engaging in unwanted conduct related to a relevant protected characteristic towards an academy employee. During interview, the affected staff member relayed the uncomfortable nature of these interactions and the strategy deployed to ensure that they are not in the same room alone, ensuring that the office door remains open when the governor goes into their office. This incident was raised by ESFA with the AO and CoG while onsite where it was confirmed that action would not be taken because it is not the function of the ESFA to make findings on specific allegations of harassment.

30. Further documentary evidence in the form of e mails from other governors was provided in relation to the behaviour of this governor, with corroboration by a witness to another incident (paras 47 and 48 refer). The nature of the incident, as confirmed in e mail evidence from witnesses, demonstrates that the governor was not only attempting to circumvent internal controls to expedite a payment to third party but was also conflicted as the party had worked closely with and was known to the governor (paras 49,50 refer).

31. By acting in an inappropriate manner towards staff and attempting to circumvent internal controls of the trust, the governor is falling short of the standards set out in the Governance Handbook and the 7 principles of public life. This is also a breach of para 3.1.12 of the Academies Financial Handbook.

## Safeguarding

32. Westfield Academy contracted with a supplier [REDACTED] during 2016/17. During the visit ESFA confirmed that the [REDACTED] [REDACTED] was leasing the staff bungalow and at staff rates rather than commercial terms. In response to concerns raised by the Safeguarding Governor and for their own confirmation, the review team enquired whether an enhanced DBS check had been performed. The CFO advised that as the [REDACTED] was contracted by [REDACTED] the trust was relying on the check undertaken by [REDACTED]. During interview with the [REDACTED] [REDACTED], who is also a governor at the trust, [REDACTED] confirmed that no one (other than [REDACTED]) was working in an official capacity for [REDACTED] was based at the site, nor were they renting any other space at the trust.

33. Following our work on site and request for a copy of the required certificate, a DBS number was provided by the trust. However, when the number was checked on the tracking website it was shown as invalid. The trust has subsequently provided a Basic Disclosure certificate dated 27 October 2017 confirming this check was carried out after

our visit. The failure or delay in carrying out DBS checks on the contractor was not in line with guidance on contractors in the Keeping Children Safe in Education Statutory Guidance, paragraphs 89 and 134-137.

## Personnel

34. In April 2017, the ESFA received allegations against the trust of potential financial irregularities, one specifically related to a pay award. ESFA contacted the CoG in writing to seek clarification and necessary assurances, including the alleged award. The CoG responded, with a report prepared by the CFO, giving assurances that no pay rise or bonus had been awarded to the CFO in the last two years that was not in line with the trust's performance management regime.

35. ESFA review of financial documentation, including payroll statements confirmed the CFO is in receipt of an annual £22,601.59 payment, referred to as an 'honorarium' on the documentation. The details of the payment are explained in a letter signed by the CoG on 22 August 2017 and state the payment will be paid per annum on top of basic salary until 31 August 2019. Prior to this from August 2014 the payment was £17,406 per annum and £22,359 from August 2015. No disclosure or explanation of this payment was made in the assurances given to the ESFA.

36. During interview, the CoG confirmed that he approved this payment in his capacity as Chair without obtaining approval from the Governing Body or the Resources Committee but that other governors were aware of this payment.

37. The trust's policy on honoraria confirms that such payments will be exceptional in their use rather than the norm. In circumstances where an honorarium is warranted, the payment would not normally exceed the value of the difference of an employee's monthly salary and one or two incremental points higher. Where duties of a higher grade are undertaken this will be treated as acting up and the difference in salary between the two posts should be paid. The payment to the CFO does not comply with the trust's pay and appraisal policy as the payment equates to 32% of basic pay rather than a difference in incremental point or pay band and no clear rationale for the payment was provided in the staff file.

38. This is a breach of AFH 1.5.11 resulting in a failure by trustees to ensure 'the proper stewardship of trust's funds' as they have not complied with their internal control framework for such payments. Interviews with other governors and the AO identified that there was no discussion held with them in relation to this payment for the CFO, nor had they formally approved it, as they would have expected to.

39. By approving continuation of this payment following conversion to an academy from a maintained school, the CoG has exceeded the powers conveyed to him through the trust's governance framework. The trust's Articles of Association, Financial Procedures Handbook, Scheme of Delegation, and Pay and Appraisal Policy do not give

executive power to approve such payments to the Chair of Governors (CoG). Review of the governing body committee and resource committee minutes did not show board approval for continuation of this payment. The CoG has therefore ultra vires approved the continuation of this honorarium payment and has failed in his statutory duty to act within his power as stated in the Companies Act 2006. In failing to deal with the irregular nature of this payment when the academy opened, the Chair of Governors could also be said to have failed to exercise reasonable care, skill and diligence in his duties as a director.

40. As the payment referred to as an honorarium breaches the trust's pay policy and did not follow the approved process, the payment could be deemed an ex-gratia payment resulting in the need for prior approval from the ESFA as per AFH 2016 section 3.7.15.

41. The payment to the CFO could also be classed as a potential novel and/or contentious transaction. AFH 2016 section 3.3.1 states that novel payments or other transactions are those of which the academy trust has no experience, or are outside the range of normal business activity for the trust. Contentious transactions are those which might give rise to criticism of the trust by Parliament, and/or the public, and/or the media. Novel and/or contentious transactions must always be referred to ESFA for explicit prior authorisation.

42. It is expected that such payments follow due process and where required gain the necessary approval. As a minimum, such awards must be signed off by those who hold power to do so, in this case the board of governors or AO must sign off such awards. During interview, the CoG confirmed that no such approval was sought.

43. The role of AO includes specific responsibilities for financial matters. It includes a personal responsibility to Parliament, and to ESFA's AO, for the financial resources under the trust's control. AOs must be able to assure Parliament, and the public, of high standards of probity in the management of public funds.

44. Subsequent to the investigation, the CFO and CoG provided written responses stating that the honorarium payment was part of the CFO's actual salary. Notwithstanding the explanation provided, the documentary evidence identified by ESFA maintains the position that these payments represented a breach of the trust's own pay policy as well as the AFH.

45. A member of staff has also been paid on the [REDACTED] payroll £9,000. This was the settlement reached with the Advisory, Conciliation and Arbitration Service (ACAS) on the 9 May as a result of conciliation action before bringing a tribunal case. The staff member left in [REDACTED] in accordance with the agreement. ESFA review of trust minutes for this period found no evidence that this had been discussed or approval from the governing body for the payment. Not gaining formal approval from the trust's governing body is a breach of the trust Scheme of Delegation. The issue of not taking compensation payments to the board of governors was identified during the investigation at the trust in 2014.

46. The [REDACTED] is currently in receipt of an acting up allowance of £8,000 for his role as [REDACTED], this allowance was £4,000 previously. No documentary evidence was held in the staff file to show that the increase in the acting up award was based upon additional responsibilities. The AFH s3.1.3 places a requirement on the trust to show that spending decisions represent value for money and are justified; this includes expenditure on staff remuneration.

## Declarations of interest and connected parties

47. ESFA identified an invoice dated 21 March 2016 confirming the trust paid for a trustee's [REDACTED] to undergo work experience with a contractor during [REDACTED] at a cost of £1,732.50. This was not disclosed on trustee individual declarations or on the trust 2015/16 financial statements resulting in a breach of AFH 2016 3.1.18. When this service was charged for the trustee should have been made aware to ensure that the relevant disclosure was made. The AO stated that he approved the work experience but was not made aware of the financial implications to the trust.

48. The trust purchased services from a relative of the CoG [REDACTED] to the value of £800 during 2015/16. This was not disclosed on trustee individual declarations or on the trust 2015/16 financial statements, breaching the AFH s3.1.14, s3.1.18, and s3.1.19

49. From the trust's finance system and supplier activity reports ESFA identified that the trust spent £4,600 with [REDACTED] during 2016/17. The trust rents a small workshop, located in the existing boundaries of the old school site, to the individual trading as [REDACTED] at £700 per year. This company is known to an existing governor through their link to the building contractor, [REDACTED]. Where there is a connection any perceived or real conflict of interest, the AFH s3.1.13 requires them to be effectively managed. No declaration was made by this governor on the individual declaration, breaching the AFH s3.1.14, s3.1.18, s3.1.19 and thus the terms of its funding agreement.

50. This conflict of interest has not been effectively managed, as the governor in question is demanding payment on behalf of [REDACTED]. Evidence presented to the review team, including e mail statements, indicates that pressure is being placed on trust staff to circumvent the internal controls by asking finance to issue payment before appropriate sign off by the CFO. Such actions breach the trust's Scheme of Delegation and the AFH s2.3.3 which states that the trust's internal control framework must ensure that delegated financial authorities are respected.

51. AFH s3.1.14 states that trusts must recognise that some relationships with connected parties may attract greater public scrutiny, such as:

- transactions with individuals in a position of control and influence, including the chair of the board of trustees and accounting officer (senior executive leader)
- 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

52. 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.

53. AFH s3.1.18 states the register of business interests must identify any relevant material interests arising from close family relationships between the academy trust's members, trustees or governors.

54. AFH s3.1.19 Trusts should consider carefully whether any other interests should be registered. Boards of trustees should keep their register of interests up-to-date through regular review. By breaching the above paragraphs of the AFH the trust also breaches paragraph 66 of its funding agreement.

## Internal controls

### ██████████ Sports Therapy

55. The trust engages ██████████, a contractor, to provide sports therapy and related training. Expenditure with this supplier for 2016/17 totalled £42,003.50. Review of invoices and documents indicates poor controls around ordering and budgeting for goods/services procured through this contractor. Staff are able to access these services without any requisition, manager approval or authorisation. As a result, committed costs are unknown until the supplier provides an invoice. The lack of controls is a breach of AFH s2.3.3.

56. The ESFA review team raised this matter with the CoG during interview. The CoG was insistent that he did not want the suggested controls implemented, as he did not want any restrictions to staff accessing the service.

57. All invoices for the 2016/17 and 2017/18 year to date were reviewed by ESFA confirming the contractor submits 2 invoices, one with the names of people he has treated and another without names. Documents provided for review during the investigation were primarily those where no names were included, therefore limiting our ability to ascertain if other such potential irregular payments were made. The invoice, as evidenced by ESFA, without names was signed off by the CoG. An invoice dated 11 July 2017 was also obtained which shows that the contractor invoiced for services delivered to the ██████████ ██████████, which was charged to the trust upon instruction of the CFO as noted in the correspondence.

58. The CoG signed off 10 invoices totalling £8,729 for services provided by the contractor. It is unclear under what authority this was done. During interview, the CoG

commented that he had delegated authority as per the Scheme of Delegation (SoD). Our review of pages 12 and 13 of the SoD which summarises financial authorisation levels does not mention the CoG, resulting in a breach of AFH s2.1.4 and a potential breach of the CoG's duty as a director under s.171 of the Companies Act 2006.

59. The Governors Handbook confirms that where an academy trust board of governors decides, the chair is permitted to act in cases of urgency where a delay in exercising the function would be likely to be seriously detrimental to the interests of the school. No such power has been conferred on the CoG and it is unclear how the signing of routine invoices would constitute an emergency.

60. The trust allowed the [redacted] of [redacted] to rent the staff bungalow at staff rates of £250 per month and a small workshop at £700 per year. ESFA requested sight of the agreement but were advised no lease was used by the trust for either of these arrangements and they were not marketed externally. No documentary evidence was provided during our visit to confirm whether commercial terms had been realistically considered. As a result, the trust was unable to demonstrate the arrangements represent value for money.

61. Not achieving commercial returns is potentially a breach of AFH s2.3.3, which states that the trust's internal control framework must ensure efficiency and value for money in the organisation's activities. The trust should seek to maximise returns on its assets where possible.

62. The CFO stated in interview that the [redacted] of [redacted] had left the property hence why a lease could not be put in place. A legally binding lease, to protect the asset and any liabilities, should be agreed prior to allowing any tenant to move in not retrospectively.

63. The trust procured a number of services from [redacted], including the removal of chemical waste. It is unclear from the documents provided whether relevant licenses are held by [redacted] to dispose of hazardous material.

## Football contract

64. The trust has a 6-year contract with [redacted] Football Club (FC) [redacted] [redacted]. The contract is a partnership agreement between the trust, [redacted] (who manage the sports centre) and [redacted] Trust. The contract enables [redacted] FC to use the trust's sporting facilities; mainly the 3G football pitches throughout the year and the trust receive advertising at the club and in match day programme, signed shirts and some hospitality.

65. The trust is also provided with one instance of match day hospitality for a match, 2 season tickets, 2 signed shirts, 2 signed balls, and 6 tickets per match for a minimum of 19 games per season. The value assigned to the tickets in the agreed contract was £4,420.

66. The trust was unable to fully account for the use and whereabouts of the 2 season and 6 match day tickets for the last academic year. The [REDACTED] stated that on a weekly basis the [REDACTED] would be contacted to enquire how many tickets were available, either 2 or 4 tickets would then be forwarded. The [REDACTED] advised the tickets would then be put in a ballot for staff and pupils who had shown exceptional performance and used as a reward. No evidence was available to track all of the available tickets provided by the contract to clarify how they were being used. This is a breach of the contract, which states that monitoring and careful tracking of tickets is required. Failure to have adequate controls in place to monitor the use of public assets can lead to an abuse of position and a misuse of public assets.

## Contracting

67. Five contracts signed in 2016/17 by the CoG, were not formally recorded as approved by the Governing Body or the Resources Committee. Additionally, during the onsite visit, the trust was unable to provide us with signed copies of three of the contracts for, catering, sports therapy and payroll services. This is a breach of the trust's Scheme of Delegation and AFH s2.1.4 and a potential breach of the COG's duty as a director under s.170-171 of the Companies Act 2006.

## Business Development Centre

68. The AO was asked by finance about an unexpected invoice for £2,500 in September 2017 for the quarterly rental payment for the Business Development Centre (BDC), a building that is no longer in the school site boundary. The BDC is on part of the site owned by Hertfordshire County Council (HCC). The AO placed this on hold, as he was not aware that any significant costs were due as the trust had been historically charged a peppercorn rent. The AO queried this cost with the CoG who confirmed in an email that no costs had been agreed.

69. Our investigation identified that the CFO was negotiating heads of terms for a 7-year contract at a cost of £70,000 plus running costs with the agent acting on behalf of HCC. The agent stated during interview and in email correspondence that he had met with the CFO in April 2017 where an initial agreement on heads of terms was reached, following which he instructed HCC's legal team to draw up a contract. ESFA obtained a copy of the Heads of Terms document confirming the annual amount of £10,000.

70. When appraised of the meetings between the CFO and agent, the AO stated that neither he nor the board of governors had given approval to enter into negotiations or to



agree any heads of terms to extend the lease which was due to end in September 2017. The governors that were interviewed stated that they were not aware that an agreement was being negotiated in relation to the heads of terms or costs of retaining the BDC and that they had not given their approval in any committees' meetings.

71. The AO stated that if he had been made aware of the cost he would have objected to it as he could not justify paying for office space when the ESFA has just granted £25 million capital funding on a new building, which has ample space to accommodate two members of staff as well as a boardroom.

72. When asked about the lease the CoG commented in interview that he had discussions at a senior level with officials at HCC on the margins of other meetings and that £16,000 per annum was proposed originally but that is not what they would pay. When asked what other governors knew about this he said that they were aware as the trust still occupy the building. Our review of trust minutes and interviews with the AO and governors does not support this comment.

73. Our review of the governing body minutes of July 2017 note that the CoG advised other governors that although no costs had been incurred in relation to the BDC, £30,000 had been allocated to cover any eventuality. The minutes do not record any details of the meeting that took place in April 2017 between the CFO and the agent of HCC or that any negotiations on heads of terms had taken place.

74. The failure to communicate effectively with the board and involve it with decision making on negotiations involving large sums of money indicates poor financial management and ineffective controls (breach of AFH 2.2.4), failure to ensure that delegated financial authorities are respected, and lack of a process for independent checking of financial controls, systems, transactions and risks (breach of AFH 2.3.3).

## Sports centre

75. As part of its sporting facilities the trust has an onsite gym, sports hall and a number of artificial football pitches provided through Sports England and the Football Association. The day-to-day management and upkeep have been contracted out to ██████████, a sports and leisure management organisation, for a 7-year period. The decision to contract with ██████████ was taken due to the expertise they brought in and the investment they would make to the facilities of the trust. The CFO, who had previous employment with ██████████, is the trust's contract manager.

76. The ESFA has reviewed both the contract and the trust minutes from March 2014 covering the decision to enter into this contract. The trust minutes state the main advantages to the trust are that the contractor has agreed to no management fee, no overheads and that as a profit share has been agreed this will facilitate the replacement of the AstroTurf carpet on the artificial football pitches.

77. During interview, the CFO indicated that [REDACTED] were reporting a £100K annual loss on the sports centre and no income has been received by the trust from [REDACTED]. The contract and transactions with [REDACTED], seen by the ESFA, confirm the trust is paying a service fee of £40,358 per annum from total costs of £88,629 paid to [REDACTED] in 2016/17.

78. Owing to the losses incurred and confirmation by the trust that there was no detailed strategy or plan to turn the losses around to generate a surplus, ESFA considers the quality of the contract management to be poor. During interview, neither the CoG nor CFO expressed any real concerns with the current position as the losses are being borne by [REDACTED]. However, this approach calls into question the original intent of entering into the arrangement.

79. The trust is also incurring expenditure on routine maintenance of the sports hall. The ESFA's examination of the trust's finance system shows that expenditure totalling £24,260 has been coded against expenditure related to sports hall maintenance. Our review of the trust's contract stipulates that [REDACTED] is contractually liable for routine repairs. Whilst the trust is contractually obligated to cover costs caused by damage by students we confirmed, through review of invoices, it was also contributing to routine maintenance such as repainting of the Sports Hall. HM Treasury guidance on Managing Public Money would class this as a special payment outside of contractual terms. Such payments would require approval from the ESFA.

80. During interview, which was minuted by ESFA, the CoG stated that the income generated by the hire of the football pitches is due to the trust. However, ESFA review of the contract did not identify any reference to this but did confirm a profit share of anything over and above £50,000. This suggests a lack of understanding by the CoG regarding the [REDACTED] contract. A review of the income reports from 2015/16 and 2016/17 of the trust's finance system does not show any income from [REDACTED].

81. As part of the agreement with Sports England and the Football Association the trust is required to set aside £250,000 sinking fund over a period of 10 years for the replacement of the AstroTurf. Over the course of the overlapping [REDACTED] contract (5-year period) £125,000 would have to be set aside. [REDACTED] has sole use of the facilities for 50% of the time over the contract period and as such, they should contribute £62,500. The CFO indicated during discussion that [REDACTED] originally agreed to this contribution but later reneged on the agreement.

## Income

82. The trust has invoiced [REDACTED] for £12,500, in accordance with the contract, for the electricity used by the floodlights for the 3G Football pitches due to their being no separate supply into the Sports Centre. This invoice has been disputed by [REDACTED]

but no details on how the dispute will be settled has been provided. The trust must ensure that all income due to it is recovered in a timely manner.

83. Due to a delay in moving from the old site to the new building [redacted] agreed to pay the trust compensation of £35,000 plus VAT. Our review of the trust's income shows only £15,000 plus VAT of this amount has been received by the trust. No further evidence of the trust obtaining the balance was provided. The outstanding balance was queried with the [redacted] during interview and clarity was sought when the balance would be paid to the trust, to date no response has been received.

84. All of the above confirm that there was insufficient consideration of value for money involved in entering into and maintaining the contract with [redacted] in breach of the AFH paragraphs 1.5.13, 2.3.3, 3.1.3 and 3.6.3.

## Conclusion

85. Following receipt of multiple allegations relating to financial management and governance issues at Westfield Academy a visit was undertaken by the ESFA to review trust arrangements. Our work on site and the evidence considered and documented has upheld those concerns, identifying a number of significant weaknesses in financial management and governance arrangements that breach the trust's Scheme of Delegation, their Articles of Association, Funding Agreement and the Academies Financial Handbook. There are also potential breaches of the Companies Act 2006.

86. In particular, ESFA noted some significant failings within the governance arrangements, which indicate that the CoG was acting outside of his powers, including approving payments and agreeing contracts when he does not have the delegated authority to do so. This is not in line with guidance relating to the role of the Chair produced by the NCTL and DfE. E mail evidence provided by governors and staff is consistent with this view and they have indicated that they are not appropriately included or sighted on information and decisions relevant to their position.

87. ESFA review of trust financial information also raises concerns about the regularity of some payments, including invoices paid for sports therapy. A number of other issues, including internal control failures and poor value for money were also identified. In particular, lack of appropriate contract management of the [REDACTED] contract to ensure the trust was not subjected to unnecessary costs.

88. ESFA consider an independent review of trust financial management and governance is required to consider current issues and highlight any additional areas of concern. The scope of the review should include but not be limited to:

- trust governance arrangements
- trust procedures and policies
- trust operations
- personnel records
- contracts and contract management

89. The review should consider the above areas in view of the regulatory framework governing academies and provide assurance on the level of compliance with those requirements. In particular, the trust's Articles of Association, the Funding Agreement, the Academies Financial Handbook and the Companies Act 2006. Where non-compliance or improvements are identified, the trust should provide ESFA with an action plan and timeline to address those issues.



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