Education & Skills
Funding Agency

Education for the 21st Century

Investigation report

November 2018

Contents

Executive summary

1. The Education and Skills Funding Agency (ESFA), received allegations on 29 March 2018 in relation to the Education for the 21st Century (E21C). The allegations related to off payroll payments being made to the Chief Executive Officer's (CEO's) personal service company, [redacted].

2. In response to the allegations, ESFA visited the academy over two days, from 2 to 3 May 2018. During the visit, the Chair of Trustees was informed that the ESFA visit was a fact-finding review but may, if any irregularity or non-compliance was evidenced, be escalated resulting in a publishable report under the ESFA policy guidance.

3. The review identified concerns, which breach the Academies Financial Handbook (AFH) 2017, the accounts direction for 2015/16 and 2016/17 audited accounts and the charities SORP FRS102, section nine. Key findings have confirmed:

- non-compliance with the Academies Financial Handbook, section 3.1.22, which specifies that academy trusts must ensure that employees payroll arrangements fully meet their tax obligations and comply with HM Treasury's guidance. Specifically, the HM Treasury Review of the Tax Arrangements of Public Sector Appointees, that the most senior staff should be on payroll unless there are exceptional temporary circumstances (temporary being less than 6 months)
    - The trust have not deducted tax and national insurance from the additional payments made to [redacted], a non-trading company, totalling £145,006. The payments were for invoiced CEO duties between 1 September 2014, with the final payment being made on 3 May 2018, covering the period up to 31 August 2018
- a failure to declare transactions with [redacted] in the 2015/16 accounts, as required by:
    - the accounts direction in place for the production of these accounts, in relation to disclosure of material transactions with related parties
    - the Charities SORP FRS102, relating to the disclosure of the remuneration and benefits received by charity trustees and in doing so not complying with 1.4.3 of the AFH

4. ESFA has recommended a referral to HMRC should be made as it has now been confirmed, through subsequent enquiries, that tax and national insurance contributions have not been deducted from the additional payments.

Background

5. E21C was incorporated as a multi academy trust in March 2011, in preparation for the conversion for The Ravensbourne School in April 2011. There are now eight schools in the MAT:

- Scotts Park Primary (converter), Bromley – April 2014
- Mottingham Primary (converter), Bromley – September 2015
- Eden Park High (free school), Bromley – September 2017
- Blenheim Primary (converter), Bromley – September 2017
- Spires Academy (sponsor led), Kent – January 2018
- Coopers School (converter), Kent – May 2018
- Mead Road Infant School (sponsor led), Kent – May 2018

6. In response to the allegations received ESFA commissioned a fact-finding visit to determine whether the allegations were founded. The visit took place over two days from 2 to 3 May 2018.

Objectives and scope

7. The objective of the review was to seek assurance that the academies 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 are evidence based and if they warranted further action by the ESFA as well as identifying potential weaknesses in the financial management and governance at the trust.

8. The scope of the review was to consider whether any potential fraud or irregularity has occurred. Work was undertaken in the following areas of financial controls and management within the trust:

- governance arrangements
- governing body and sub committee minutes and supporting papers
- review of key policies and procedures, including the scheme of delegation
- procurement processes in operation
- trust expenditure and register of contracts
- staff contracts of employment
- payroll processes

Findings

Related party transactions

9. Allegations were made in relation to off payroll payments being made to the CEO's personal service company, which have been declared in the 2016/17 audited accounts, as a related party transaction. No such declaration was made in the 2015/16 accounts.

10. This is a breach of the accounts direction for each year in relation to disclosure of material transactions with related parties, the Charities SORP 9 and the AFH at 1.4.3, relating to the disclosure of the remuneration and benefits received by charity trustees.

11. Our testing by review of all invoices, identified that the trust have not deducted tax and national insurance from the additional payments made to [redacted], a non-trading company, totalling £145,006. The payments were for invoiced CEO duties, between 1 September 2014 and 31 August 2018, with the final payment being made on 3 May 2018.

12. The AFH at 3.1.22, states that academy trusts must ensure that their senior employees' payroll arrangements fully meet their tax obligations and comply with HM Treasury's guidance about the employment and contract arrangements of individuals on the avoidance of tax, as set out in HM Treasury's Review of the Tax Arrangements of Public Sector Appointees. Failure to comply with these requirements can result in a fine by HM Treasury.

13. Current legislation, as at April 2017, in respect of off-payroll working rules (IR35) for public authorities requires the trust to decide whether the off-payroll working rules apply because the appropriate conditions have been met. The trust, as a public authority, should therefore have been deducting tax and national insurance from the payments made directly to the intermediary, in this case the CEO's company. The trust have confirmed that they had not done so.

14. In previous years, the CEO would have been expected to manage the tax affairs of his company in accordance with legislation (IR35). However the company is listed as non-trading, with the filed accounts for the period ending 30 June 2016, showing no income and no expenditure. In addition, Companies House records show the accounts for the period ending 30 June 2017, which should have been filed by 31 March 2018 are overdue. A confirmation statement, due on 16 June 2017 was not been filed until 26 June 2018. Therefore, we cannot conclude that the income received from the trust has been accurately accounted for.

15. Our testing also identified that there is no separate contract or contract variation in place in respect of the CEO's additional duties over and above his substantive contract of employment, which relates to his post as the [redacted] at [redacted]. Whilst the trust have confirmed in writing to the CEO that he would be paid

an additional £25k over and above his head teacher salary, for the additional work undertaken as the CEO, for the period beginning 1 September 2014 and £40k for the period beginning 1 September 2015, there were no such letters on the personnel file for 1 September 2016 and 1 September 2017, to include the final payment made in May 2018. There is also no record of the specific tasks being undertaken to attract this additional pay. The AFH at 2.3.5, states that the board of trustees must ensure that their decisions about levels of executive pay follow a robust evidence based process and are reflective of the individuals roles and responsibilities.

16. The trust have since confirmed that they have not deducted any tax/NI in relation to the payments made to the CEO through [redacted] [redacted]. However, they have asked their accountants if the 2017/18 and 2018/19 tax year payments can be treated as on payroll and, therefore, subject to employee tax/NI and they await their response. The trust should ensure that they also inform ESFA of the outcome.

17. The CEO's accountants are also in discussions with HMRC and initial outcomes suggest that tax is owed. However the extent of this is not clear at this stage, as the investigations are yet to establish how HMRC will view the arrangements in terms of the applicability of IR35 rules. Once this is concluded, the trust should confirm the outcome to ESFA.

18. The trust have also confirmed that the current CEO will step down from his role as trustee and accounting officer and that the current chief operating officer will become the accounting officer. The decision was also made that no further off payroll arrangements would occur in the future.

Conclusion

19. Following receipt of allegations relating to financial management and governance issues at E21C, a visit was undertaken by the ESFA to review the academies arrangements. Our work on site has upheld these concerns, identifying a breach of the AFH 2017, the accounts direction and the charities SORP.

20. We also confirmed that there is no contract/contract variation in place in respect of the additional duties undertaken by the CEO.

21. As a result of our work, ESFA recommends the following:

- an independent referral to HMRC should be made raising our concerns over the arrangements
- the trust should confirm to ESFA the outcome of their discussions with their accountants over 2017/18 and 2018/19 tax year payments
- they should also confirm to ESFA the outcome of the CEO’s accountant’s investigation into his tax affairs.

22. Since completion of this review the trust have worked with ESFA to address the findings.

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