



Education & Skills  
Funding Agency

Education and Skills Funding Agency,  
Cheylesmore House,  
5 Quinton Road,  
Coventry,  
CV1 2WT

Tel: 0370 000 2288  
[ESFA-enquiry-form](#)

2 November 2021

Mr John Rutherford  
Chair of Trustees  
Learners' Trust  
Eckington Business Centre II  
Gosber Street  
Sheffield  
S21 4DA

Dear Mr Rutherford

### **Notice to improve: Learners' Trust**

I am writing to you in your capacity as the Chair of Trustees at Learners' Trust.

As you know, the Education and Skills Funding Agency (ESFA) has been monitoring the trust's progress towards meeting the conditions set out in the Financial Notice to Improve (FNtl) warning letter of 12 March 2021. I recognise the actions taken by the trust following the issue of the warning letter. However, our concerns remain in relation to the weak financial position and financial management at the trust.

This letter and its annexes serve as a written notice to improve financial management, internal controls and governance at the trust (Ntl or "the Notice"). It reflects the deficit position of the trust and continued concerns on the level of oversight of financial management by the board.

The trust is required, pursuant to the provisions of the Academy Trust Handbook (ATH) and the Funding Agreement (FA), to comply with the terms of this Notice. These terms are set out in Annex A and Annex B.

Being issued with a Notice means that certain delegated authorities, as defined in the ATH, have been revoked. All transactions previously covered by these delegations, regardless of their size, must now be approved in advance by ESFA, specifically:

- special staff severance payments
- compensation payments
- writing off debts and losses
- entering into guarantees, indemnities or letters of comfort
- disposals of fixed assets beyond any limit in the funding agreement

- taking up a leasehold or tenancy agreement on land and buildings of a duration beyond any limit in the trust's funding agreement
- carry forward of unspent GAG from one year to the next beyond any limit in the funding agreement
- pooling of GAG

If the trust comes to the ESFA to seek retrospective approval this will be deemed a breach of the ATH. Further details of the approval process will be forwarded to the Accounting Officer upon acknowledgment of receipt of this letter. These delegated authorities shall be returned to the trust once we are satisfied that the requirements of the Notice have been, and will continue to be, complied with to the satisfaction of the Secretary of State.

We will monitor progress made towards meeting the requirements of this Notice. We will lift the Notice when the requirements set out in the annex have been met in full.

We reserve the right to issue a revised Notice and add further specific conditions, should the trust fail to make sufficient progress against the original conditions. Should it become evident that the trust is unlikely to fulfil the conditions set out in this Notice within the agreed timescales, we will explore the contractual intervention options available.

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 ATH. This will amount to a breach of the terms of the FA and may lead to termination.

If continued non-compliance with the ATH occurs, we may also refer the case to the Charity Commission or Insolvency Service for further investigation, as deemed appropriate in the circumstances.

I should be grateful if you would acknowledge receipt of this letter by email to [REDACTED] within 3 working days. In line with the requirements set out in ESFA's publishing policy, the trust has 10 working days to offer any final comments on factual accuracy before publication. The trust is required to publish the Ntl on its website within 14 days of it being issued and retain it on the website until the Ntl is lifted by ESFA.

I am copying this letter to the Accounting Officer, Matt Freeston, trust members: Dino Blackburn, Ian Powell, Kevin Walker, and the Regional Schools Commissioners (RSC) for East Midlands and Humber; Carol Gray and Kate Copley.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to be 'D. Blackburn', is written over a light gray dotted rectangular background.

**Warwick Sharp**  
**Director, Academies and Maintained Schools Directorate**

CC. Matt Freeston, Accounting Officer  
Carol Gray, Kate Copley RSC for East Midlands and Humber  
Dino Blackburn, Ian Powell, Kevin Walker (trust members)

**Notice to improve**

The Education and Skills Funding Agency (ESFA) has decided to issue a Notice to improve (the 'Notice') as a consequence of Learners' Trust (the 'Trust') failure to:

- submit its audited financial statements and auditor's management letter by the required deadline to the ESFA as required in the Academies Trust Handbook (ATH) paragraphs 4.1 – 4.4
- ensure the trust continues to remain a going concern as required by the ATH, paragraphs 1.21, 2.8 – 2.11, 2.20
- ensure regularity and propriety in use of the trust's funds and taking ownership of the trust's financial sustainability as required by the ATH, paragraph 1.41 – 1.42, 4.13
- maintain a sound programme of internal scrutiny with adequate identification of risks to ensure financial and on-financial controls are effective, ATH paragraph 2.6 – 2.7, 3.1 – 3.4, 3.8
- maintain a robust oversight of the trust's finances as required by the ATH, paragraph 2.1 – 2.2

**Conditions**

1. The trust is required to comply with all of the conditions set out in Annex B.

**Financial management and governance requirements**

2. The Trust is responsible for its own financial management, control and governance and is expected to take appropriate action to strengthen the weaknesses identified and return to compliance with the Academy Trust Handbook.
3. The Trust should take all appropriate actions to ensure the action plan agreed with the ESFA is fully implemented.
4. The ESFA must be satisfied that the Trust is doing everything it can to rectify the weaknesses identified.

**Monitoring and progress**

5. The Trust is required to submit the evidence for the specific conditions to the timescales outlined in Annex B to enable the ESFA to monitor compliance and progress.
6. Should it become evident that the Trust is unlikely to fulfil the conditions and/or requirements set out in this Notice and/or within the given timescales, the ESFA will begin to consider and explore the contractual intervention options available.

7. The ESFA reserve the option to require the trust to work with a School Resource Management Advisor (SRMA) deployment to validate the trust's action plan as judged to be appropriate.

#### **Compliance and the end of the notice period**

8. As outlined in Annex B, the trust is required to submit evidence to demonstrate compliance with the conditions of this notice, which the ESFA will use to monitor the trust's progress. Annex B sets out the detail of the evidence required to fulfil the condition and the timescales to submit this evidence to the ESFA.
9. When the Trust meets all the conditions outlined in this Notice, is fully compliant with the most recent edition of the ATH and no other breaches have been identified, the ESFA will write to the Trust to confirm that the Notice has been lifted.

## Learners' Trust

### Table of conditions

The table below summarises the conditions that have been placed upon Learners' Trust ("the Trust"). It sets out the evidence the Trust must provide, and the timescales the Trust must meet, to show that they have complied with the Notice to improve ("the Notice"). All conditions set out in the table must be met before the Notice can be lifted.

Condition	Evidence required to show compliance with the notice	Timescale
1. The trust is required to: a) comply with the funding agreement requirement to submit all audited accounts to the ESFA on time and without qualification b) submit the Budget Forecast Return Outturn (BFRO) by the deadline required by the ESFA c) submit the Budget Forecast Return (BFR) by the deadline required by the ESFA d) contact the ESFA at an early stage if it believes it is falling behind the schedule set out in their Trust financial plan	The ESFA receives audited financial statements by 31 December 2021, and, each year until the Ntl is lifted.  The ESFA receives BFRO by 17 May 2022, and each year until Ntl is lifted.  The ESFA receives BFR by 26 July 2022, and each year until Ntl is lifted.  Returns show recovery in line with the Trust financial plan.	Submit audited accounts by 31 December 2021, and by the required deadline each year following this.  Submit BFRO by 17 May 2022, and by the required deadline each year following this.  Submit BFR by 26 July 2022, and by the required deadline each year following this.
2. The trust must demonstrate improvement in financial systems and control in the 2020/21 audited account, by reducing the number of issues in the management letters.	The trust must demonstrate improvement in financial systems and control in the audited account management letters including:  a) significant reduction in number of financial control risks and	Submit audited accounts and management letters by 31 December 2021, and by the required deadline each year following this.

	<p>weaknesses brought forward from the previous academic year,</p> <p>b) no new financial control risks or weaknesses identified in the academic year.</p>	
<p>3. The trust requests approval from the ESFA, in advance, for any actions under the revoked freedoms in Part 3 and paragraph 6.21 of the ATH. These requests should be sent using the <a href="#">ESFA enquiry form</a>. Retrospective approval will be deemed as a breach of the ATH.</p>	<p>The trust must submit a request for approval for any actions relating to the delegated freedom revoked under the terms of the Ntl.</p>	<p>The trust must comply with this condition for the duration of the Ntl.</p>
<p>4. The trust is required to prepare and submit a trust financial plan which details how the trust intends to achieve a cumulative surplus position.</p>	<p>Prepare and submit a trust financial plan. The plan must include, as a minimum:</p> <ul style="list-style-type: none"> <li>a) how the trust will achieve a cumulative surplus position. This must be supported by robust budget forecasts through to 2023/24 with evidence to support realistic pupil number forecasts,</li> <li>b) a clear efficiency and savings plan, setting out specific areas where savings have been achieved and where further savings can be made across the trust,</li> </ul>	<p>Prepare and submit a trust financial plan within 8 weeks of issue of the Ntl.</p> <p>Following this the trust must continue to adhere to its financial plan and continue to demonstrate financial recovery through management accounts and financial returns.</p>

	<ul style="list-style-type: none"> <li>c) to ensure value for money the trust has benchmarked its income and expenditure and that of its schools against that of similar trusts and schools and investigated further where any category appears to be out of line,</li> <li>d) the trust compares its non-staff expenditure against the DfE recommended national deals to ensure it is achieving value for money.</li> </ul>	
<p>5. The trust must undergo a further external review of governance (ERG), to verify the implementation of recommendations from the previous ERG.</p> <p>The terms of reference of the review and pen portrait for the reviewer must be shared with ESFA for approval prior to the review being commissioned.</p>	<p>The terms of reference of the review and pen portrait for the reviewer must be shared with ESFA for approval prior to the review being commissioned. The outcome must be shared with the ESFA. The scope of the review should include but not be limited to:</p> <ul style="list-style-type: none"> <li>a) trust governance arrangements; (as a minimum, an assessment of the oversight exercised by the Trust board, a skills audit of the current members and trustees)</li> <li>b) trust procedures and policies</li> <li>c) trust operations</li> <li>d) safeguarding policies and oversight</li> </ul>	<p>Terms of reference and pen portrait for the reviewer must be submitted by 31 January 2022.</p> <p>The report must be shared within 5 working days of its completion and an updated action plan must be provided within 4 weeks.</p>



	<ul style="list-style-type: none"> <li>e) financial reporting to trustees and effectiveness of financial challenge by trustees</li> <li>f) confirmation (or otherwise) of the implementation of recommendations from the previous ERG</li> </ul>	
6. The trust must produce an evidence-based justification for the high level of Executive pay at the trust.	<p>The trust must provide ESFA with evidence-based justification for the high level of Executive pay including:</p> <ul style="list-style-type: none"> <li>a) evidence of trust board discussions regarding leadership high salaries, such as board minutes of the discussions</li> <li>b) evidence that benchmarking and value for money are considered by trustees when setting executive pay</li> <li>c) evidence that key performance indicators are considered by trustees when evaluating performance</li> </ul>	Within 6 weeks of issue of the Ntl.
7. The trust must provide evidence that all potential related party transactions (RPT) over the past 18 months have been considered by the trust in consultation with the trust auditors.	<p>The trust must provide evidence that:</p> <ul style="list-style-type: none"> <li>a) all potential RPTs over the past 18 months have been considered by the trust,</li> </ul>	Within 6 weeks of issue of the Ntl.

	<ul style="list-style-type: none"> <li>b) the trust auditors have been consulted about these RPTs,</li> <li>c) all RPTs subject to ESFA approval have been approved, retrospective approval will be deemed a breach of this condition.</li> </ul>	
8. The trust must demonstrate effectiveness of safeguarding procedures and practices across the trust.	<p>The trust must demonstrate effectiveness of safeguarding procedures and practices across the trust. This includes providing evidence of the following (ensuring pupil personal data is removed),</p> <ul style="list-style-type: none"> <li>a) up to date safeguarding policies for each academy (including reference to LA policies, key contacts at the academy and any local safeguarding considerations) as set out in statutory guidance,</li> <li>b) evidence of designated safeguarding leads (DSL) managing safeguarding at academies,</li> <li>c) evidence of safeguarding audits conducted annually,</li> <li>d) evidence of safeguarding training given to staff and trustees,</li> </ul>	Within 4 weeks of issue of the Ntl.

	e) overview of how trustees maintain oversight of safeguarding arrangements at academy level and mitigate any risks.	
9. The trust is required to submit monthly management account information. This must demonstrate financial reporting remains in compliance with the ATH and demonstrate the trust is able to adhere to its financial plan.	<p>We will expect the trust to supply the following financial information on a monthly basis for the remainder of 2021/22. This timeframe may be extended if sufficient assurance is not provided.</p> <p>This must include:</p> <ul style="list-style-type: none"> <li>a) revenue income and expenditure report with a narrative explaining any significant variances for the current full academic year,</li> <li>b) a balance sheet showing the position at the end of the last calendar month and forecast to the end of the academic year,</li> <li>c) a detailed monthly cash flow forecast rolling 12 months ahead,</li> <li>d) details of any further aged creditors, which cause cash flow pressures.</li> </ul>	Ongoing on a monthly basis by 20th of following month.
10. The trust must continue to take action to implement the financial stability action plan previously provided to the ESFA and meet the timescales it has set.	<p>The trust must continue to provide ESFA with monthly updates on its action plan including:</p> <ul style="list-style-type: none"> <li>a) an updated action plan</li> </ul>	Ongoing on a monthly basis by 20th of each month.

	<ul style="list-style-type: none"> <li>b) evidence of completion of actions</li> <li>c) evidence the trust continues to monitor completed actions to ensure that practises remain embedded</li> </ul>	
11. The trust is required to provide meeting minutes for all trust board and audit committee meetings for 2020/21 and 2021/22 going forward.	<p>Trust is required to provide:</p> <ul style="list-style-type: none"> <li>a) all trust board and audit committee meeting minutes for 2021/22 going forward, this timeframe may be extended if sufficient assurance is not provided.</li> </ul>	Trust to provide meeting minutes within 5 working days of approval of minutes.
<p>12. The trust must provide the following evidence:</p> <ul style="list-style-type: none"> <li>a) internal audit reports completed in 2020/21 currently and associated action plans demonstrating issues have been addressed,</li> <li>b) schedule for remaining internal audits in 2021/22,</li> <li>c) internal audit reports for 2021/22 going forward, this timeframe may be extended if sufficient assurance is not provided.</li> </ul>	<p>The trust must provide the following evidence:</p> <ul style="list-style-type: none"> <li>a) internal audit reports completed in 2020/21 currently and associated action plans demonstrating issues have been addressed</li> <li>b) schedule for remaining internal audits in 2021/22</li> <li>c) internal audit reports for 2021/22 going forward, this timeframe may be extended if sufficient assurance is not provided</li> </ul>	<p>Internal audit reports within 5 working days of finalisation.</p> <p>Actions incorporated into the trust action plan within 4 weeks of completion.</p>