



Education & Skills Funding Agency

Education and Skills Funding Agency
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Email enquiry form:

www.education.gov.uk/contactus/dfe

Date: 23 January 2023

Mr P M Baker
Chair of Trustees
St Aidan's Church of England Academy
Hundens Lane
Darlington
County Durham
DL1 1LL
Company Number: 06162865

Dear Mr Baker

Notice to improve: St Aidan's Church of England Academy

I am writing to you in your capacity as the Chair of St Aidan's Church of England Academy (the Trust) to inform you that we are issuing the Trust with a Notice to Improve because of financial management and governance concerns.

Firstly, I want to thank you for the positive action you have taken since the ESFA conducted a review of your financial governance in October 2022 and for your cooperation with my team. While I recognise that the Trust has taken some action to address matters, due to the extent of issues identified, the ESFA does not have sufficient assurance of good financial management and governance within the Trust. These issues constitute 30 breaches of the Academy Trust Handbook (ATH) and breaches of the Companies Act 2006. Consequently, my concerns remain in relation to the financial management and governance at the Trust.

This letter and its annexes serve as a written notice to improve financial management and governance at the Trust (Notice to improve, Ntl or "the Notice"). It reflects continued concerns in relation to governance and oversight of financial management by the Board.

The Trust is required, pursuant to the provisions of the 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Being issued with a Notice means that certain delegated authorities, as defined in the ATH, have been revoked.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 seeks retrospective approval from the ESFA 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 if required, 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 and / or requirements set out in this Notice and / or 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 and/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 within three working days of the date of this letter to [REDACTED]. 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 published on gov.uk and retain it on the website until the Ntl is lifted.

I am copying this letter to the Accounting Officer Dean Lythgoe, Trust Members Anne Crossland, David Crossland, Nigel Wylvey-Birch and Paul Rickeard, and Katherine Cowell, DfE Regional Director for the North East.

We look forward to hearing from you.

Yours sincerely



Kevin Sumpth on behalf of Warwick Sharp
Director, Schools Financial Support and Oversight

CC:

Dean Lythgoe - Accounting Officer

Anne Crossland - Member

David Crossland - Member

Nigel Wylvey-Birch - Member

Paul Rikeard - Member

Katherine Cowell - Regional Director, North East

Notice to improve

The Education and Skills Funding Agency (ESFA) has decided to issue a Notice to improve (the 'Notice') as a consequence of St Aidan's Church of England Academy (the 'Trust')

- Failing to ensure robust governance (ATH 2021: 1.13)
- Failing to ensure regularity and propriety in the use of the trust's funds (ATH 2021: 1.21)
- Failing to appoint a suitably qualified Chief Financial Officer (ATH 2021: 1.45 & 1.46 and ATH 2022: 1.45)
- Failing to appoint a governance professional to support the board of trustees (ATH 2021: 1.49)
- Failing to share the management accounts with the chair of trustees on a monthly basis (ATH 2021: 2.19).
- Failing to ensure board meeting minutes sufficiently document the level of scrutiny and challenge from trustees (ATH 2021: 2.3).
- Failing to publish on its website details of employees earning over £100k (ATH 2021: 2.32).
- Failing to have an up to date contingency and business continuity plan (ATH 2021: 2.39).
- Failing to regularly update the scheme of delegation and to set appropriate delegations level (ATH 2021: 2.4 and ATH 2022: 2.4 and 2.6)
- Allowing staff trustees to participate as committee members when audit matters were discussed (ATH 2021: 3.11)
- Failing to implement an internal scrutiny programme which is spread over the full year (ATH 2021: 3.15)
- Failing to ensure the audit committee reviewed the annual accounts and the auditors findings (ATH 2021: 4.17).
- Failing to conduct a legal assessment of staff severance payments (ATH 2021: 5.8).
- Failing to appoint the Chief Executive Officer in writing (ATH 2022: 1.34).
- Failing to have sound internal control processes (ATH 2022: 2.6 and 2.7).
- Failing to document the trust's board's approval of the budget (ATH 2022: 2.10).
- Failing to have an investment policy in place (ATH 2022: 2.25).
- Failing to publish the trust's whistleblowing policy (ATH 2022: 2.44).
- Failing to publish up to date details of the trust's governance arrangements (ATH 2022: 2.50)
- Failing to update Get Information About Schools within 14 days of changes (ATH 2022: 2.54).
- Failing to renew the Terms of Reference for the audit committee (ATH 2022: 3.8 and ATH 2022: 3.12)
- Failing to act on auditor findings in a timely manner (ATH 2022: 4.16)
- Failing to maintain an up-to-date register of trustees interests (ATH 2022: 5.45 and ATH 2022: 5.48)

- Failing to discuss letters from the ESFA Accounting Officer (ATH 2022: 6.2)
- Failing to provide ESFA with all requested information (ATH 2022: 6.4).
- Failing to retain records for 6 years (ATH 2022: 6.6)

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.

Compliance and the end of the notice period

7. 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.
8. 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.

Annex B Table of Conditions

The table below summarises the conditions that have been placed upon St Aidan's Church of England Academy ("the Trust"). It sets out the evidence the Trust must provide and the timescales the Trust must meet, to show that it has 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 applied | Action/ evidence required from trust | By when |
|----|---|---|---|
| 1. | The Trust must agree to undertake a DfE commissioned independent review of the Trust's governance arrangements to identify any gaps and recommendations for improvement. The reviewer and Terms of Reference will be set by the department. The department will share outcomes of the review with the Trust in the form of a report and the Trust will be expected to provide an action plan in response to the report. | <ul style="list-style-type: none"> To undertake the review within agreed timescales. Trust to develop an action plan to meet the recommendations of the review. | 4 weeks after the receipt of the report |
| 2. | The Trust must agree to undertake a School Resource Management Advisor (SRMA) deployment and should make reasonable endeavours to implement improvements identified by the SRMA. | <ul style="list-style-type: none"> The Trust should provide ESFA/DfE with details of the actions they have taken to attempt to implement the improvements identified by the SRMA. The Trust should incorporate this within an action plan. | 4 weeks after the receipt of the report |
| 3. | The Trust must provide the ESFA/DfE with its latest internal audit findings and any actions taken by 27 March 2023. | <ul style="list-style-type: none"> The Trust must provide the ESFA/DfE with its latest internal audit findings and actions taken. | 8 weeks |
| 4. | Implement new financial management and monitoring structures and undertake further actions to strengthen challenge in managing the budget and finances. This must include ensuring effective processes are in place for the Trust to monitor financial performance and the financial risks to its operation. This will be evidenced by a written report to be submitted by 27 March 2023. | <ul style="list-style-type: none"> Submit written report, detailing the actions the trust has taken to strengthen the financial management and monitoring structures, to ESFA/DfE by 27 March 2023. | 8 weeks |
| 5. | <p>The Trust must consider transferring the academy to a strong Multi-Academy Trust (MAT).</p> <p>The ESFA/DfE expect any decision regarding joining a MAT to result from careful consideration of all relevant factors. The Trust must provide the ESFA/DfE with a detailed breakdown of the evidence considered and reasoning underlying the Trust's decision. This includes, but is not limited to:</p> <p>a) Details of the MATs that were considered</p> | <ul style="list-style-type: none"> Trust board meets to consider transferring the academy to a strong MAT and confirms its decision to ESFA/DfE by 24 April 2023. Trust provides a detailed breakdown of the reasoning behind its decision and produces evidence as requested in the condition. | 12 weeks |

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| | <p>b) That the following factors were considered</p> <ul style="list-style-type: none"> i. Geographical proximity ii. Alignment of vision and values iii. Capacity and quality of support iv. Long term sustainability <p>c) Evidence of discussion and scrutiny of proposals e.g. board meeting minutes, MAT presentations, risk analysis etc.</p> <p>d) Evidence that all decisions have been approved by the board through a majority vote</p> | | |
| 6. | The Trust must ensure that proper arrangements are in place, whereby the Trust board has the appropriate skill set and processes in place to challenge and hold to account the Accounting Officer, Finance Officer and other members of the executive management team and evidence this. | <ul style="list-style-type: none"> The Trust board is providing appropriate challenge and has the skills necessary to carry out its duties effectively. | 4 weeks |
| 7. | <p>The Trust must establish a revised scheme of delegation, which meets the required criteria set out in the ATH, the trust must:</p> <ul style="list-style-type: none"> Approve a written scheme of delegation of financial powers that maintains robust internal controls Ensure delegated financial authorities are complied with Provide ESFA/DfE with evidence of its use. | <ul style="list-style-type: none"> The ESFA/DfE is satisfied the Trust has a strong governance structure in place, including a revised scheme of delegation and evidence of its use. | 6 weeks |
| 8. | The Trust must implement a robust procurement policy that ensures that the requirements of Para 2.28 of the Academy Trust Handbook are complied with | <ul style="list-style-type: none"> Documents setting out procurement policy submitted to ESFA/DfE | 4 weeks |
| 9. | The Trust must update its register of interests as per the requirements of ATH 5.45-5.48. | <ul style="list-style-type: none"> Trust must publish updated register of interests, that meets all the requirements set out at 5.45 – 5.48 of the ATH. | 4 weeks |
| 10. | Provide evidence to ESFA/DfE of improved and robust measures to ensure compliance, including publication of necessary information on the Trust's website as per the ATH. | <ul style="list-style-type: none"> The Trust has published all necessary information on their website, as required by the ATH. | 4 weeks |
| 11. | <p>The Trust is required to:</p> <p>a) Comply with the funding agreement requirement to submit all audited financial statements to the ESFA on time and without qualification.</p> | <ul style="list-style-type: none"> The ESFA receives audited financial statements by 31 December, each year until the NTI is lifted. The ESFA receives BFR by date required, each year until NTI is lifted. | Submit audited financial statements by 31 December, each year until the NTI is lifted. |

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| | <p>b) The Trust is required to submit the Budget Forecast Return (BFR) by the deadline required by the ESFA.</p> <p>c) Contact the ESFA at an early stage if it believes it is not able to follow or is falling behind the schedule set out in their Trust financial plan.</p> | <ul style="list-style-type: none"> Returns show recovery in line with the Trust financial plan. | Submit BFR by date required, each year until Ntl is lifted. |
| 12. | The Trust requests approval from the ESFA, in advance, for any actions under the revoked freedoms in Part 3 and Annex B of the AFH. These requests should be sent using the esfa-enquiry-form . Retrospective approval will be deemed as a breach of the AFH. | <ul style="list-style-type: none"> The Trust must submit a request for approval for any actions relating to the delegated freedom revoked under the terms of the Ntl. | Until the Ntl is lifted. |
| 13. | Ensure that all necessary Trustee contact details are up to date. | <ul style="list-style-type: none"> All fields specified in GIAS for the individuals must be completed before the Ntl can be lifted. The trust must ensure its record on Get information about schools for the individuals remains up to date. | 4 weeks |

