

Conflict of Interest and Related Party Transaction “At Cost” Policies

Adopted by: **Lime Trust Board**

Date: **10 October 2017**

Review date: **10 October 2018**

Signature of Chair of Trustees: _____

Conflict of Interest Policy

Why we have a Policy

Trustees of a charity have a legal obligation to act in the best interests of the charity. For the purposes of charity law, the Trustees are those people who are responsible for the general control and management of the administration of the charity. The Trust is an “exempt” charity, the Principal Regulator being the Secretary of State for Education. The Trust’s Articles of Association explain what the Trustees must do to avoid situations where there may be a potential conflict of interest. An identical obligation is placed on the Members of the Trust.

Conflicts of interests may arise where an individual's personal or family interests and/or loyalties conflict with those of the Trust. Such conflicts may create problems. They can:

- inhibit free discussion;
- result in decisions or actions that are not in the interests of the Trust; and
- risk the impression that the Trust has acted improperly.

The aim of this policy is to protect both the organisation and the individuals involved from any appearance of impropriety. This Policy operates without prejudice to any of the provisions in the Trust’s Articles of Association relating to conflicts of interest.

The Declaration of Interests

We are asking Members of the Trust, the Trustees, members of the Academy Councils/Transition Boards and all staff to declare their interests, and any gifts or hospitality received in connection with their role in the Trust. A Declaration of Interests form is provided for this purpose, listing the types of interest you should declare. All interests, including gifts of a value over £50, must be notified to the Trust Chair and a Register of Interests will be maintained by the Trust.

To be effective, the declaration of interests needs to be updated at least annually and also when any changes occur.

If you are not sure what to declare, or whether/when your declaration needs to be updated, please err on the side of caution. If you would like to discuss this issue, please contact the Trust Chair for confidential guidance.

Data Protection

The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 1998. Data will be processed only to ensure that the Members, Trustees, members of the Academy Councils/Transition Boards and all staff act in the best interests of the Trust. The information provided will not be used for any other purpose.

What to do if you face a Conflict of Interest

If you have a direct or indirect interest in:

- a) a proposed transaction with the Trust; or
- b) any transaction or arrangement entered into by the Trust which has not previously been disclosed;

you must disclose the nature and extent of that interest, whether or not you receive any actual benefit as a consequence of the interest. You may have an indirect interest in a matter if a family member or friend has an interest in the matter.

As good practice, every Member, Trustee and member of the Academy Council/Transition Board should declare any private interest which he or she has in an item to be discussed at the beginning of every meeting, and certainly before any discussion of the item itself. You should not be involved in decisions in which it is possible that a conflict will arise. You should declare your interest at the earliest opportunity and withdraw from any subsequent discussion.

If you fail to declare an interest that is known to the Clerk and/or the Trust Chair or the Chair of the Academy Council/Transition Board, the Clerk or Chair will declare that interest.

Decisions taken where an individual has an Interest

In the event of the Trust Board having to decide upon a question in which a Member, Trustee, member of the Academy Council/Transition Board or a member of staff has an interest because of a duty or

loyalty (however indirect) that they owe to another organisation, they will do so by vote, with a simple majority required. The conflicted individual may be present when the matter is discussed, but must not take part in the discussion or vote on any matter relating to the discussion and a quorum must otherwise be present for the discussion and decision.

An individual will generally not have a conflict of interest or loyalty simply by virtue of the fact that he or she has been appointed or nominated to the Trust Board or to the Academy Council by a third party or the Trust itself and the Trust has dealings with that third party, but if any undue influence is exerted by that third party or the individual has an interest in the matter for a reason other than mere appointment or nomination, then the circumstances will need to be reconsidered.

All decisions made where there has been a declared conflict of interest will be recorded by the Clerk and reported in the minutes of the meeting. The report will record:

- the nature and extent of the conflict;
- an outline of the discussion;
- the actions taken to manage the conflict.

Where either a Member or Trustee benefits from the decision, this will be reported in the Annual Report and Accounts in accordance with the current Charities SORP making reference also to any potential conflict situation recognised in this Conflicts of Interest policy. All payments or benefits in kind to Members and Trustees will be reported in the Trust's Accounts and Annual Report, with amounts for each Member and Trustee listed for the year in question.

Where a member of the Trust's staff is connected to a party involved in the supply of a service or product to the Trust, this information will also be fully disclosed in the Annual Report and Accounts, again making reference to any potential conflict situation recognised in this Conflicts of Interest policy.

The Trust also formally acknowledges the Education & Skills Funding Agency's guidance on "related party transactions" (please see page 5 onwards below).

Independent external moderation will be used where conflicts cannot be resolved through the usual procedures.

Managing Contracts

If you have a conflict of interest, you must not be involved in managing or monitoring a contract or transaction in which you have an interest. Monitoring arrangements for such contracts will include provisions for an independent challenge of bills and invoices, and termination of the contract if the relationship is unsatisfactory.

Notified Conflicts of Interest

Without prejudice to any of the obligations on individuals as expressed in this Policy, the Trustees have identified the following as matters where relevant individuals will have an interest in the matter and such interest has not been expressly authorised in the Trust's Articles of Association but is considered to be a matter which is in the best interest of the Trust and is authorised provided the principles of this policy are observed (particularly in relation to discussions, decisions and management of the matter where there is a genuine conflict):

- The nomination of individuals by the Academy Council to serve on the Trust Board;
- The appointment or nomination of individuals by the Trust Board to serve on the Academy Council; and
- The fact that some of the Trustees might also be Members of the Trust.

Related Party Transaction “At Cost” Policy

This policy should be read in conjunction with the ESFA’s review of related party transactions in academies November 2014

Summary

The ESFA carried out a rigorous, risk-based analysis of all related party transactions disclosed in academy trusts’ financial statements for the 2012 to 2013 academic year. This document is based on this ESFA review and explains what is meant by related parties and explains the policy. The review provides:

The review also found examples of related party transactions that offered tangible benefits to academy trusts as well as being compliant with the Academies Financial Handbook.

The introduction of the Department for Education’s ‘at cost’ policy, combined with the recent investigation and enforcement activity the ESFA has undertaken has reinforced the importance of this issue.

Background

What is a related party transaction?

Related parties arise where one party has control or influence over the other, or where the parties are subject to common control. This includes parent companies and their subsidiaries, key management personnel including company directors, their close family members and other entities in which these parties have a controlling interest. Accounting standards require transactions between related parties to be disclosed in company financial statements as related party transactions.

Disclosure requirements

The disclosure of related party transactions is standard accounting practice across the private and public sectors. Such disclosures provide accountability and transparency to the public and Parliament and demonstrate that potential conflicts of interest are being identified, managed and reported.

Accounting standards require related party transactions to be disclosed in a reporting entity's financial statements, so that users can gain a full understanding of the transactions which have taken place, and any factors that might have influenced them.

The ESFA's Academies Accounts Direction sets out that, for academy trusts, related parties include:

- parties with control over, or controlled by, the entity (for example parent and subsidiary companies)
- parties having significant influence over the entity
- key management personnel of the entity, including any director, whether executive or otherwise
- close family members of any of the above
- others subject to control or significant influence by any individual referred to above

Where related party transactions had occurred, the Academies Accounts Direction, section 7.6.10 stipulated that disclosure must be made and should include:

- the names of the related parties
- a description of the relationship between the parties
- a description of the transactions
- the amounts involved
- the amounts due to or from related parties at the balance sheet date, and any provisions for doubtful debts or amounts written off

The 2013 Academies Accounts Direction (sections 7.6.13 to 7.6.18) also requires a separate related party disclosure for the remuneration and expenses paid to a principal, staff trustees and other trustees. This disclosure is in line with the Charity Statement of Recommended Practice. Whilst trustees cannot usually be paid for their work as trustees, they can claim expenses.

Academy trusts are required by company law to have the disclosures made in their financial statements subject to independent audit by a registered auditor. The trust's auditors are also required to undertake a regularity review which covers the regularity of both expenditure and income. This review provides assurance to Parliament and the public that income and expenditure have been applied for the purposes intended.

Managing procurement and potential conflicts of interest

- **Declarations of an interest** – under company and charity law, the directors/trustees of academy trusts have a duty to declare any personal interest in proposed transactions and avoid conflict of interest.

- The Academies Financial Handbook goes further by requiring trusts to maintain a register of interests which *‘must capture relevant business and pecuniary interests of members, trustees, local governors of academies within a multi-academy trust and senior employees’*.
- Trusts should also consider whether to include the interests of other individuals in the register of interests (for example, other employees or relatives of close family members of individuals already on the register). If in doubt, the best practice would be to include an interest in the register. Boards of trustees should keep their register of interests up-to-date through regular review.
- **Removal from the decision-making process** – where a potential conflict of interest is identified, the individual concerned should remove themselves from the decision-making process for the duration of the transaction. This will include, but is not limited to, the original decision to enter into a contract with the related party, periodic contract performance reviews and/or contract renegotiation/renewal.
- **Competitive procurement procedures followed** – the Academies Financial Handbook requires trusts to be able to demonstrate that funds have been applied to the purposes intended by Parliament, that they have achieved value for money and that a competitive tendering policy is in place and applied.
- Whilst trusts are responsible for establishing the detail of their own procurement procedures, they should formalise those procedures by gaining approval for them from the trust’s governing board, fully apply them to all related party transactions and ensure that an audit trail for compliance to their own financial regulations is maintained.
- During the reviews undertaken, the vast majority of trusts were able to demonstrate robust procurement procedures.
- **Decision making based on a value for money assessment** – the Academies Financial Handbook requires trusts to be able to demonstrate that *‘spending decisions represent value for money’* and for value for money to form part of an academy’s decision-making process.

Introduction of the ‘at cost’ policy

In November 2013, the Department for Education (DfE) introduced an ‘at cost’ policy for related party transactions. The policy requires related party transactions, as defined in the Academies Financial Handbook, to be at cost only, with no profit allowed. For the accounting period 2014/15, to reduce bureaucracy, a *de minimis* limit of £2,500 has been introduced, but transactions above that limit must still be ‘at cost’.

The Department for Education has recognised that more could be done to help academy trusts to be clear about what is required and to ensure that academy trusts are sufficiently clear of the requirements placed upon them and the consequences of not meeting those obligations.

The package of measures to enhance awareness of and compliance with the policy on academy - related party transactions includes the following:

- ESFA's oversight regime has been strengthened to ensure more extensive compliance with the policy. Action has already taken place on this through the reporting requirements for related party transactions set out in the Academies Accounts Direction, with increased emphasis on trusts being able to indicate how they have managed the transactions (for example, by describing the procurement process they have followed).
- ESFA is continuing to stress the importance of the issue of related party transactions through guidance to external auditors to ensure that they prioritise it in their audits of trusts.
- ESFA has promoted and communicated the current policy to academy trusts through revised guidance in the Academies Financial Handbook, online training and webinars and the information that new trusts receive with their academy order.
- ESFA has published generic examples of acceptable and unacceptable transactions and a 'statement of assurance' template to help provide greater clarity to academy trusts. The template is at Annex C.
- The revised Academies Financial Handbook draws to the attention of trusts the relationship between related party transactions and the provisions relating to novel and/or contentious transactions and obligations on members and trustees not to derive personal gain from their positions.
- The Academies Financial Handbook makes it clear that ESFA has the discretion to issue a Financial Notice to Improve to a trust which has breached the policy, and where they have done so, the trust may be prohibited from entering into future related party transactions without prior approval from ESFA for the duration of the financial notice.
- ESFA will consider when issuing a Financial Notice to Improve, for an issue other than breach of the policy on related party transactions, whether to require as part of the notice that the trust must seek ESFA approval for related party transactions for the duration of the financial notice.

Conclusions

Academy trusts are granted more freedoms than local authority-maintained schools, but with these freedoms come additional responsibilities and accountability.

Academy trusts already have stronger requirements placed on them than their local authority counterparts as they are required to produce annual financial statements which are independently audited. Trusts' auditors must also comment on the regularity of the expenditure incurred.

The introduction of the 'at cost' policy in November 2013, the publication of updated guidance and the package of measures set out in this report combine to further strengthen the framework within which trusts operate. Whilst making clear to trusts the requirements placed upon them and the consequences of not meeting those obligations.

This represents to trusts an unprecedented level of transparency, accountability and scrutiny, to parents, the public, ESFA and to Parliament to balance those freedoms we all want to see drive innovation in education.

Annex A - Definitions of irregularity and impropriety Irregularity

Irregular transactions are those that fail to meet the requirement to deal with all items of income and expenditure in accordance with legislation, the terms of the trust's funding agreement and the Academies Financial Handbook, and compliance with internal trust procedures. This includes spending public money for the purpose intended by Parliament.

Impropriety

Improper transactions are those that fail to meet the requirement that expenditure and receipts must be dealt with in accordance with Parliament's intentions and the principles of parliamentary control. This covers standards of conduct, behaviour and corporate governance.

Annex B: Examples of beneficial related party transactions

If managed properly, the following transactions can be beneficial:

- **Diversification** – where trusts establish subsidiary companies, to manage services provided by a trust (for example to deliver school to school support, or to run nurseries or other trading activities such as cleaning or a sports facility that also benefits the wider community). These generate additional income, but in doing so trusts may need to recharge staffing, accommodation and other costs. Regularly, directors are common to both the academy trust and the subsidiary, hence this arrangement will often give rise to related party transactions.
- **Shared services** – for example, with local authorities and sponsors (that can offer facilities management services or catering) – these may offer reduced costs through economies of scale. However, we recognise the potential for lax procurement practices (e.g. lack of market testing) and conflicts of interest.
- **Shared accommodation** – may fall into the same bracket as shared services, perhaps more-so in relation to head office functions in MATs.
- **School improvement support** – this is sometimes offered by trusts where the head teacher may be a trustee at both of the institutions involved in the transaction. In most cases the financial transactions would be between the institutions involved and would be to cover the cost of supply cover for the member of staff providing support, this would be within the current rules as the transaction would be deemed to be ‘at cost’.
- **‘In house’ expertise** – where a trust is related to a recognised national lead in a given area, who is able to provide consultancy support (for example, school improvement support) ‘at cost’ and is selected by open and transparent procurement. Sufficient controls would be in place to manage any conflicts of interest. This may be an economic way for trusts to procure such services. The cost to the trust is likely to be less than procuring exclusively from the open market and/or the quality of the services provided will be high.
- **Diocesan education authorities** – may receive a voluntary contribution from academies if the diocese provides a service to the academy which is connected with securing a school’s religious nature and ethos.

- **Donations** – when a charity, sponsor or other philanthropist contributor is represented on a trust’s board (or has a connection to someone that does) and makes donations such as funds, equipment, accommodation. These donations would be identified as related party transactions within the trust’s financial statements.

Annex C: Pro-forma statement of assurance

This form is for completion by an individual or organisation (the ‘supplier’), defined in the [Academies Financial Handbook](#) (the ‘handbook’) as a ‘connected party’ to an academy trust. Individuals and organisations supplying goods or services to a connected trust must charge no more than cost (defined at the end of the form). This form will also help trusts comply with their funding agreement obligations.

Section 1: Supplier details

Name and address of supplier	
Company number (if applicable)	
Start date	
End date	
Estimate of commercial price, including profit	
Connection with trust, e.g. trustee is also a director of the supplier of goods and services	
Value of goods or services to trust <i>At cost without profit</i>	£
Does this value include direct costs and indirect costs only?	Yes / No
Nature of contract <i>Such as professional services</i>	

Section 2: Details of contract

Explanation of how the supplier is charging the academy trust

This should include a sufficiently detailed explanation setting out that the supplier understands its direct and indirect costs in such a way to demonstrate to the academy trust that it is supplying goods and services at cost, without any element of profit.

[Please extend the rows below if the contract is longer than three years]

	Direct costs	Indirect costs	Total
Year 1	£	£	£
Year 2	£	£	£
Year 3	£	£	£
Total	£	£	£

Section 3: Supplier certification

Certification of supplier	
I certify, on behalf of [name of supplier] that:	
<ul style="list-style-type: none"> the goods and services detailed in this form will be supplied to the academy trust on the basis of direct cost plus indirect costs, with no element of profit; we are supplying the goods and services on an open book basis and we will provide more information on request; and we will make an adjustment in the following year if we identify a miscalculation on our direct or indirect costs, and supplied goods or services which included an element of profit. 	
Name and position	
Date	
Signature	

Section 4: Academy signoff

Certification of academy trust	
In signing this document, I am satisfied that:	
<ul style="list-style-type: none"> the goods and services being supplied comply with the requirements on trading with connected parties as set out in the handbook, and represent value for money; there is full compliance with the trust's Scheme of Delegation; open and fair procurement and compliance with the trust's procurement procedures have taken place; potential conflicts of interest within the academy trust have been robustly managed; the trust's register of interest captures relevant business and pecuniary interests as set out in the handbook, and will be updated to reflect this contract (if not already); the supplier understands that open book arrangements are in place and they will provide more information on request, if needed; and both the trust's accounting officer and chair of board of trustees have agreed to trade with this connected supplier, and that the measures and safeguards listed above are in place. 	
Name and position (in academy trust)	
Date	
Signature	

Notes

Direct costs means the costs of any materials and labour used directly in producing the goods or services.

Indirect costs means a proportionate and reasonable share of fixed and variable overheads.

At cost means without profit as it includes direct and indirect costs only.

Estimate of commercial price acknowledges that the value of such contracts varies depending on a number of factors and negotiations. The supplier should identify a reasonable and fair price, e.g. from previous similar contract