



# Related Party and Contentious Transactions Policy

(INCLUDING THOSE THAT ARE NOVEL, CONTENTIOUS AND/OR REPERCUSSIVE)

**ADHERENCE TO THE ACADEMIES HANDBOOK IS COMPULSORY WITH ALL RELEVANT DEALINGS.**

Created by Sam Taylor September 2023	Ratified by Trustees October 2023
Next Review due June 2025	

## RELATED PARTY TRANSACTIONS

Related parties include persons and entities with control or significant influence over the academy trust, and members of the same group (e.g., parent and subsidiary companies, key management personnel and close family members). A full definition can be found in:

- section 33 of [Financial Reporting Standard 102](#)
- section 9.15 and appendix 1 of the [Charities SORP](#)

FRS102 requires all transactions with related parties to be disclosed in the accounts so that users can gain a full understanding of them and of issues that might have influenced them. Disclosure provides accountability and transparency to the public and demonstrates that potential conflicts of interest are being identified and reported by the Trust.

### Types of Related Party Transactions

Related party transactions can be categorised as two types: income and outgoing. The Trust must disclose these separately:

- Examples of incoming related party transactions in the academy sector include the donation of goods, services, property or money by a related party defined as above.
- Common examples of outgoing related party transactions in the academy sector include the purchase of goods, services such as training, the use of tradespeople, IT, consultancy or HR services or property by a related party defined above.

### Principles relating to Related Party Transactions.

The Trust **must** be even-handed in its relationships with related parties by ensuring that:

- trustees comply with their statutory duties as company directors to avoid conflicts of interest, not accept benefits from third parties, and declare interest in proposed transactions or arrangements.
- all members, trustees, local governors of academies and senior employees complete the register of interests, in accordance with the Academies Handbook
- no member, trustee, local governor, employee or related individual or organisation uses their connection to the trust for personal gain, including payment under terms that are preferential to those that would be offered to an individual or organisation with no connection to the trust
- there are no payments to trustees by the trust unless permitted by the Articles, or by authority from the Charity Commission, and comply with any relevant agreement with the Secretary of State. The Trust will need to consider these obligations where payments are made to other business entities who employ the trustee, are owned by the trustee, or in which the trustee holds a controlling interest.
- the Charity Commission's approval is obtained where the trust believes a significant advantage exists in paying a trustee for acting as a trustee.
- payments provided to the related party satisfy the 'at cost' requirements in the Academies Handbook.

The Trust should be aware of the Charity Commission's guidance for trustees [CC11: Trustee expenses and payments](#).

The board of trustees **must** ensure requirements for managing related party transactions are applied across the trust. The board chair and the accounting officer **must** ensure their capacity to control and influence does not conflict with these requirements. They **must** manage personal relationships with related parties to avoid both real and perceived conflicts of interest, promoting integrity and openness in accordance with [The 7 principles of public life](#).

The Trust **must** recognise that some relationships with related parties may attract greater public scrutiny, such as:

- transactions with individuals in a position of control and influence, including the board chair and accounting officer
- payments to organisations with a profit motive, as opposed to those in the public or voluntary sectors
- relationships with external auditors beyond their duty to deliver a statutory audit

The Trust **must** keep sufficient records, and make sufficient disclosures in their annual accounts, to show that transactions with these parties, and all other related parties, have been conducted in accordance with the high standards of accountability and transparency required within the public sector.

### **Reporting and approval of related party transactions**

The Trust **must** report all contracts and other agreements with related parties to ESFA in advance of the contract or agreement commencing or renewing, using ESFA's [related party on-line form](#). This requirement applies to all such contracts and agreements made on or after 1 April 2019.

The Trust **must** obtain ESFA's prior approval, using ESFA's related party on-line form, for contracts and other agreements for the supply of goods or services to the trust by a related party agreed on or after 1 September 2023 where any of the following limits arise:

- a contract or other agreement exceeding £40,000 in the same financial year ending 31 August.
  - This does not include contracts and other agreements for the supply of goods or services to a trust by the following educational establishments:
    - colleges, universities and schools which are sponsors of the academy trust
    - state funded schools and colleges, including academies

But this concession does not apply to transactions with a subsidiary of such a related party.
- a contract or other agreement of any value that would mean the cumulative value of contracts and other agreements with the related party exceeds, or continues to exceed, £40,000 in the same financial year ending 31 August

For the purposes of reporting to, and approval by, ESFA contracts and agreements with related parties do not include salaries and other payments made by the Trust to a person under a contract of employment through the Trust's payroll.

## Details Required for Disclosure

All transactions undertaken by the Trust with related parties must be regarded as material regardless of their size and must be disclosed. Under the SORP disclosure must 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
- details of any guarantees given/received
- terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement
- any other elements of the transactions which are necessary for the understanding of the accounts.

## Any Payments made to Trustees

The SORP requires remuneration and other benefits received by a trustee for their role as a trustee to be disclosed separately from remuneration and other benefits received for other employment with the academy trust. This is because, unlike directors of commercial companies, it is not normal practice for charity trustees to receive remuneration from the charities for which they are responsible.

Related party disclosures must include the following types of payment:

- salary and benefits (for example termination/severance payments) paid to the principal and/or chief executive in their capacity as staff where, as is usual, they are an ex-officio governor and hence a director and trustee
- salary and benefits (for example termination/severance payments) paid to other staff, in their capacity as staff, where they are also trustees and hence directors.

The disclosure must clearly state that the individuals received the remuneration in respect of their employment as staff, not in respect of their work as trustees.

DfE's model articles of association for academy trusts prevent the payment of academy trustees for their services as a trustee without the approval of the Charity Commission, who may give such approval only in the most exceptional cases. If exceptionally the Charity Commission has agreed that an academy trust can pay a trustee for their services as a trustee, as opposed to their services as staff, this fact must be stated in the financial statements and the payment must be disclosed as a related party transaction.

Under the SORP, disclosure must include the name of each trustee in receipt of remuneration and other benefits, and details of the amounts involved.

Under the Direction, ESFA is content for the Trust to present the amounts in £5,000 bandings.

Confidentiality cannot be used as a reason for non-disclosure of principals' and other trustees' remuneration in related party disclosures. In addition to disclosure of trustees' remuneration, the financial statements must also disclose:

- the amount of employer pension contributions paid in respect of trustees
- the number of trustees who have had their expenses reimbursed and the total amount of expenses reimbursed
- any other related party transactions with trustees including payments for services under commercial contracts (for example payments for goods and services to a company owned by a trustee)

### At Cost Requirements

The Trust **must** pay no more than 'cost' for goods or services ('services' do not include contracts of employment) provided to it by the following persons ('persons' meaning both individuals and organisations):

- members or trustees of the academy trust
- individuals or organisations related to a member or trustee of the academy trust. For these purposes the following persons are related to a member, or trustee:
  - a relative of the member or trustee. A relative is defined as a close member of the family, or member of the same household, who may be expected to influence, or be influenced by, the person. This includes, but is not limited to, a child, parent, spouse or civil partner
  - an individual or organisation carrying on business in partnership with the member, trustee or a relative of the member or trustee
  - a company in which a member or the relative of a member (taken separately or together), and/or a trustee or the relative of a trustee (taken separately or together), holds more than 20% of the share capital or is entitled to exercise more than 20% of the voting power at any general meeting of that company
  - an organisation controlled by a member or the relative of a member (acting separately or together), and/or a trustee or the relative of a trustee (acting separately or together). For these purposes an organisation is controlled by an individual or organisation if that individual or organisation can secure that the affairs of the body are conducted in accordance with the individual's or organisation's wishes
- any individual or organisation given the right under the trust's articles of association to appoint a member or trustee of the academy trust; or anybody connected to such individual or organisation
- any individual or organisation recognised by the Secretary of State as a sponsor of the academy trust; or anybody connected to such individual or organisation.
- Any individuals who currently or previously have been employed by the trust at a senior level. Such transactions will need prior approval by the ESFA.

A body is connected to another individual or organisation if it is controlled by the individual or organisation, or controls the organisation, or is under common control with the individual or organisation. For these purposes, control means:

- holding more than 20% of the share capital (or equivalent interest), or
- having the equivalent right to control management decisions of the body, or
- having the right to appoint or remove a majority of the board or governing body.

The 'at cost' requirement does not apply to the trust's employees unless they are also one of the parties described in the academies handbook. The exception to this are individuals who currently or previously have been employed by the trust at a senior level. Such transactions will require ESFA pre-approval.

While these provisions do not apply to contracts of employment, the principles of [value for money](#) and using public money properly, including managing conflicts of interest, still apply. Salaries should be appropriate to the individual's skills and experience and to wider market rates. Expenses should always be approved by a person more senior than themselves within the organisation. In the case of the CEO then approval is required from a trustee.

If staff of an individual or organisation are based in, or work from the premises of, the academy trust, that individual/ organisation and the trust **must** agree an appropriate sum to be paid to the trust for use/occupation of the premises, save to the extent that they are carrying out work for the trust.

The 'at cost' requirement applies to contracts with a related party agreed on or after 7 November 2013.

The 'at cost' requirement applies to contracts with a related party exceeding £2,500, cumulatively, in any one financial year. To provide for additional certainty the £2,500 is on a twelve monthly rolling basis rather than restricted to financial year. Where a contract takes the trust's cumulative annual total with the related party beyond £2,500, the element above £2,500 **must** be at no more than cost.

In relation to organisations supplying legal advice or audit services to the academy trust, the 'at cost' requirement applies where the organisation's partner managing the service is a member or trustee of the trust but not in other cases for those organisations. The published [ethical standards](#) for auditors prevent partners or employees of the audit firm from acting as a trustee of their client trust, but not of other trusts.

For academies with a religious designation, the provision of services to protect and develop their religious character and ethos, which can only be provided by their religious authority, are regarded as meeting the "at cost" requirement.

The Trust **must** ensure any agreement with an individual or organisation referred as a related party supply goods or services to the trust is properly procured through an open and fair process and is:

- supported by a statement of assurance from that individual or organisation to the trust confirming their charges do not exceed the cost of the goods or services, and
- on the basis of an open book agreement including a requirement for the supplier to demonstrate clearly, if requested, that their charges do not exceed the cost of supply

For these purposes the cost will be the ' full cost' of all the resources used in supplying the goods or services and **must not** include any profit. Full cost includes:

- all direct costs (costs of materials and labour used directly in producing the goods or services)
- indirect costs (a proportionate share of fixed and variable overheads)

## APPROVAL OF UNUSUAL, NOVEL, CONTENTIOUS AND/OR REPERCUSSIVE TRANSACTIONS

Novel, contentious and/or repercussive transactions **must** always be referred to ESFA for approval, and the request **must** be made to ESFA **before** the transaction occurs regardless of value. ESFA may refer such transactions to HM Treasury for approval, so the Trust should allow sufficient time for proposals to be considered.

- Novel transactions are those of which the academy trust has no experience or are outside its range of normal business.
- Contentious transactions are those that might cause criticism of the trust by Parliament, the public or the media.
- Repercussive transactions are those likely to cause pressure on other trusts to take a similar approach and hence have wider financial implications.

Novel, contentious and/or repercussive related party transactions are subject to separate arrangements.

**Approval must be sought using ESFA's [enquiry form](#), not through the related party on-line form.** Trusts should carefully consider the impact of this requirement and its relevance to transactions involving the board chair and/or the accounting officer.

Any such transactions, prior to approval submission to the ESFA must be discussed openly and approved at a full trustee meeting to consider a range of opinions. Any such transactions involving the Senior Leadership Team either during or after employment by the Trust must be discussed and approved at a full trustee meeting. Any such transactions must have at least two arms-length comparable quotes to support the value for money of the transaction. This is regardless of value. No profit can be made over fees/sales of £2,500 per annum on a rolling 12 month basis. Full open-book accounting is required. No payment will be made without ESFA approval and a valid purchase order number.

### Special payments

Certain transactions may fall outside the trust's usual planned range of activity and may exceed statutory and contractual obligations. HM Treasury calls these special payments and are subject to greater control than other payments. They include:

- staff severance payments
- compensation payments
- ex gratia payments.

### Special staff severance payments

Special staff severance payments are paid to employees outside statutory or contractual requirements when leaving public employment such as with the Trust. They are different to ex gratia payments.

If the Trust is considering a staff severance payment above statutory or contractual entitlements, it must be referred to the CFO and Chair of Trustees who must consider the following issues before making a binding commitment:

- that the proposed payment is in the trust’s interests
- whether the payment is justified, based on legal assessment of the trust’s chances of successfully defending the case at employment tribunal. If there is a significant prospect of losing the case, a settlement may be justified, especially if the costs of a defence are likely to be high. Where a legal assessment suggests the trust is likely to be successful, a settlement should not be offered
- if the settlement is justified, the trust would need to consider the level of settlement. This must be less than the legal assessment of what the relevant body (e.g., an employment tribunal) is likely to award.

Staff severance payments should not be made where they could be seen as a reward for failure, such as gross misconduct or poor performance. The only acceptable rationale in the case of gross misconduct would be where legal advice is that the claimant is likely to succeed in an employment tribunal because of employment law procedural errors. In the case of poor performance, an acceptable comparison would be the time and cost of taking someone through performance management and capability procedures.

Where the academy trust is considering a staff severance payment including a non-statutory/non-contractual element of £50,000 or more, (gross, before income tax or other deductions), The CFO must contact the ESFA to receive their prior approval making any binding offer to staff. ESFA will refer such transactions to HM Treasury, so trusts should allow sufficient time for proposals to be considered. Examples of approval requirements are as follows:

Statutory/contractual payment		Non-statutory/noncontractual payment	ESFA/HM Treasury approval required?
£30,000	+	£30,000	No
£60,000	+	£30,000	No
£30,000	+	£50,000	Yes – for £50,000

The Trust must demonstrate value for money by applying the same scrutiny to a payment under £50,000 as those over £50,000 and have a justified and evidenced business case. Settlements must not be accepted unless satisfying the conditions in the relevant Academy Trust Handbook and in ESFA’s guidance and submission template.

Additionally, in accordance with HM Treasury’s Guidance on Public Sector Exit Payments, the trust must obtain prior ESFA approval before making a special staff severance payment where:

- an exit package which includes a special severance payment is at, or above, £100,000; and/or
- the employee earns over £150,000.

### **Use of confidentiality clauses**

The Trust must ensure confidentiality clauses associated with staff severance payments do not prevent an individual’s right to make disclosures in the public interest (whistleblowing) under the Public Interest Disclosure Act 1998. All such clauses should be reviewed by the Trust’s legal advisors if unclear.



## Compensation payments

A Compensation payment would provide redress for loss or injury, for example personal injuries, traffic accidents or damage to property. If the trust is considering a compensation payment, the decision must be based and evidenced on a careful appraisal, including legal advice where relevant, and ensure value for money.

As a trust, we have delegated authority to approve individual compensation payments provided any non-statutory/non-contractual element is under £50,000. Where the trust is considering a non-statutory/non-contractual payment of £50,000 or more ESFA's prior approval must be obtained. ESFA will refer such transactions to HM Treasury.

A review should be performed by the CEO to consider whether cases reveal concerns about the effectiveness of internal control systems and take steps to correct failings. This should be reported to the A, R&R committee and remedies actioned.

## Ex gratia payments

Ex gratia payments are another type of transaction going beyond statutory or contractual cover, or administrative rules. Examples would include payments to meet hardship caused by official failure or delay, and to avoid legal action due to official inadequacy.

Ex gratia transactions must always be referred to ESFA for prior approval. HM Treasury approval may also be needed. If there is doubt about a proposed transaction, the trust should seek ESFA advice.

## Write-offs and entering into liabilities

The trust must obtain ESFA's prior approval for the following transactions beyond the delegated limits described below:

- writing-off debts and losses.
- entering into guarantees or letters of comfort; and
- entering into indemnities which are not in the normal course of business

The delegated limits, are:

- • 1% of total annual income or £45,000 (whichever is smaller) per single transaction
- • cumulatively, 2.5% of total annual income (subject to a maximum of £250,000) in any financial year per category of transaction for trusts that have not submitted timely, unqualified accounts for the previous two financial years. This category includes new trusts that have not had the opportunity to produce two years of audited accounts
- • cumulatively, 5% of total annual income (subject to a maximum of £250,000) in any financial year per category of transaction for trusts that have submitted timely, unqualified accounts for the previous two financial years.

In relation to these limits:

- The Bad Debt Policy should be followed with guidance from Central Finance.
- the trust should always pursue recovery of amounts owed to it, including overpayments, or erroneous payments. In practice, however, there will be practical and legal limits to how cases should be handled

- the trust should only consider writing-off losses after careful appraisal, including whether all reasonable recovery action has been taken with the debtor, the trust's insurers, or the risk protection arrangement, and should be satisfied there is no feasible alternative
- the amounts for write-offs are before successful claims from an insurer or the risk protection arrangement

### **Letters of Comfort or Indemnity**

Before accepting liabilities by issuing guarantees, a letter of comfort or indemnity, the trust should secure value for money by appraising the proposal through assessment of the costs and benefits of relevant options.