Related Party, Novel, Contentious, Repercussive and Special Transactions and Register of Interests Policy

ADHERENCE TO THE ACADEMY TRUST HANDBOOK IS COMPULSORY WITH ALL RELEVANT DEALINGS.

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Contents

IT IS IMPORTANT FOR ANYBODY INVOLVED IN SPENDING PUBLIC MONEY TO DEMONSTRATE THAT THEY DO NOT BENEFIT PERSONALLY FROM THE DECISIONS THEY MAKE.

1.0 Related Party Transactions

KEYSTONE MUST REPORT ANY INTENTION TO ENTER INTO A NEW TRANSACTIONS WITH A RELATED PARTY TO THE DfE BEFORE CONFIRMING THE TRANSACTION WITH THE RELATED PARTY. THIS INCLUDES TRANSACTIONS BEING RENEWED WITH A RELATED PARTY.

ANY RETROSPECTIVE APPLICATIONS IS A BREACH OF THE ACADEMY TRUST HANDBOOK AND THE DfE MAY CONSIDER FURTHER ACTION. IN ADDITION, IT WOULD REQUIRE REPORTING THE BREACH IN THE STATEMENT OF REGULARITY, PROPRIETY AND COMPLIANCE IN THE ANNUAL ACCOUNTS.

1.1 Related Party Definition

Related parties arise where one party has control or influence over the other, or the parties are subject to common control.

Related parties include:

- Parties with control over, or controlled by, the trust, e.g. parent and subsidiary companies
- Parties having significant influence over the trust
- Key management personnel of the trust, including any director, whether executive or otherwise
- Close family members of any of the above (including spouses, partners, children, parents, siblings and other close relatives),
- Others subject to control or significant influence by any individual referred to above
- Individuals or organisations with a stake in a company or organisation that is bidding for a contract with the school.

All of the above must declare their interest and take no part in any procurement process.

The definition of influence is the power to participate in the operating and financial policy decisions of an entity, which falls short of "control".

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.

1.2 Related Party Transaction Definition

A related party transaction is a transaction, contract or agreement for the provision of goods or services or any discrete transaction with a related party. Where an agreement comprises a number of planned transactions, these should be declared as a single submission.

1.2.1 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.
- Common examples of outgoing related party transactions in the academy sector include the purchase or goods, services such as training, the use of tradespeople, IT, consultancy or HR services or property by a related party.

1.3 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 an 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 Academy Trust 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 Academy Trust 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 Chair of Trustees 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 Chair of Trustees 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.

1.4 Reporting and approval of related party transactions

The Trust **must** report all contracts and other agreements with related parties to the DfE **in advance of** the contract or agreement commencing or renewing, using the DfE's form:

https://onlinecollections.des.fasst.org.uk/fastform/related-party-transactions

This requirement applies to all such contracts and agreements made on or after 1 April 2019.

Transactions which are reported but do not require approval, will still be monitored by the DfE:

- As part of routine oversight for compliance and transparency purposes,
- To improve or shape future policy changes.

Even though approval may not be required for certain transactions it is still important to maintain accurate records and documentation of all transactions with related parties. If required, Keystone may need to make this information available to the DfE as part of an audit or review.

1.4.1 Transactions over £40,000

The Trust must obtain DfE's prior approval, using the DfE'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 and exceeding £40,000. The £40,000 approval threshold applies to single transactions with the same supplier; the transaction value is not aggregated by supplier.

This approval requirement does not apply in the following circumstances:

- transactions 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.

This concession does not apply to transactions with a subsidiary of such a related party.

- transactions for the provision of goods or services to an academy trust with a religious designation, for essential functions fundamental to the academy trust's religious character and ethos which can only be provided by their religious authority.

These related party transactions must be declared to the DfE using the online form.

For the purposes of reporting to, and approval by, the DfE, 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.

Novel, contentious or repercussive related party transactions are subject to separate arrangements (see below).

1.4.2 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.

1.5 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.

The 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, the DfE 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).

1.6 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 DfE.

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 DfE 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).

2.0 Novel, Contentious, Repercussive and/or Special Transactions

2.1 Definitions

NOVEL TRANSACTIONS: Those of which the academy trust has no experience, or that are outside the range of its normal business.

CONTENTIOUS TRANSACTIONS: Those that might cause criticism of the trust by Parliament, the public or the media.

REPERCUSSIVE TRANSACTIONS: Those likely to cause pressure on other trusts to take a similar approach that therefore have wider financial implications.

Novel, contentious and/or repercussive transactions **must** always be referred to the DfE for approval, and the request **must** be made to the DfE **before** the transaction occurs regardless of value.

Any such transactions, prior to approval submission to the DfE, 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 DfE approval and a valid purchase order number.

Approval must be sought using DfE's **enquiry form**, not through the related party on-line form**.**

A single request for approval can be submitted for a series of intended transactions with the same supplier if sufficient detail about each transaction is included in the evidence provided.

The DfE may refer such transactions to HM Treasury for approval, so the Trust should allow sufficient time for proposals to be considered.

Trusts should carefully consider the impact of this requirement and its relevance to transactions involving the Chair of Trustees and/or the Accounting Officer.

2.2 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.

2.3 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 DfE to receive their prior approval before making any binding offer to staff. The DfE 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	DfE/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 DfE's guidance and submission template.

Additionally, in accordance with HM Treasury's Guidance on Public Sector Exit Payments, the trust must obtain prior DfE 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.

2.4 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.

2.5 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, Keystone 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 DfE's prior approval must be obtained. DfE 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 Finance, Audit and Risk committee and remedies actioned.

2.6 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 the DfE for prior approval. HM Treasury approval may also be needed. If there is doubt about a proposed transaction, the trust should seek DfE advice.

3.0 Write-offs and Entering into Liabilities

The trust must obtain the DfE'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 Debt Recovery 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.

4.0 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.

5.0 Register of Interests

5.1 Register of interests – DfE Musts

The Trust's register of interests **must** capture relevant business and pecuniary interests of members, trustees, local governors and senior employees, including:

- directorships, partnerships and employments with businesses,
- trusteeships and governorships at other educational institutions and charities,
- Interests arising from close family relationships with other members, trustees or local governors
- Interests arising from close family relationships with trust employees. This can include a parent/spouse/sibling/business partner where influence could be exerted over a member/trustee or a member of staff by that person.

For each of these interests, we are required to declare: the name and nature of the business, the nature of the interest and the date the interest began.

'Close family relationships' is defined in the Academy Trust Handbook.

The Trust should consider whether other interests should be registered, and if in doubt should do so. The Boards of Trustees **must** always keep their register of interests up to date.

The Trust **must** publish on their websites relevant business and pecuniary interests of members, trustees, local governors and accounting officers. Trusts have discretion over the publication of interests of other individuals named on the register.

The register should be always kept up to date and held by the Clerk to the Trust for the trust and the Clerk to the Governors for each individual school. It must be open to public inspection.

5.2 Principles relating to the Related Party Register

The Board of Trustees MUST ensure requirements for managing related party transactions are applied across the trust. The Chair of Trustees 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 'The 7 principles of public life'.

To avoid any misunderstanding that might arise all trust members and trustees (including the local governing boards) and Senior Leadership Staff are required to declare any financial interests they have in companies, organisations or individuals from which the trust may purchase goods or services.

The Trust MUST pay no more than "cost" for goods/services provided to it by the following persons:

- Members/trustees of the trust (and local governors),
- Individuals or organisations related to a member/trustee of the academy trust,
- Any individual/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 an individual or organisation,

- Any individual or organisation recognised by the Secretary of State as a sponsor of the trust, or anybody connected to such an individual/organisation.

The existence of a register of business interests does not, of course, detract from the duties of members/trustees and staff to declare any interests whenever they are relevant to trust matters. Where an interest has been declared, members/trusts and staff should not attend that part of any committee or other meeting where the matter is discussed and should not be involved in the decision-making around the related party.

Members/trustees are also not allowed to accept benefits from third parties.

Disclosure of an interest does not inhibit the trust from using a particular company, organisation or individual so long as it is an arms-length transaction, the appropriate purchase procedure has been followed (for example multiple quotes obtained for work), and the company / organisation / individual is chosen based on best value.