Charter Schools, Academy Schools, and Related-Party Transactions: Same Scams, Different Countries

Preston C. Green III
University of Connecticut

Chelsea E. Connery
University of Connecticut

Follow this and additional works at: https://scholarworks.uark.edu/alr

Part of the Educational Assessment, Evaluation, and Research Commons, Education Law Commons, and the Secondary Education Commons

Recommended Citation
Available at: https://scholarworks.uark.edu/alr/vol72/iss2/5

This Article is brought to you for free and open access by ScholarWorks@UARK. It has been accepted for inclusion in Arkansas Law Review by an authorized editor of ScholarWorks@UARK. For more information, please contact ccmiddle@uark.edu.
Charter Schools, Academy Schools, and Related-Party Transactions: Same Scams, Different Countries

Preston C. Green III* Chelsea E. Connery**

INTRODUCTION

In the course of the last quarter century, governmental entities in both the United States and England have sought to encourage educational innovation by creating publicly funded schools that are independent from many of the rules that apply to locally controlled schools. These schools are called charter schools in the United States and academy schools (academies) in England.1 Private companies run a high percentage of these charter schools and academies. In the United States, these companies are commonly referred to as educational management organizations (EMOs).2 In England, these organizations are called academy trusts (ATs).3

---

* Professor of Educational Leadership and Law, Neag School of Education, University of Connecticut. We thank Vanderbilt University for giving Preston Green the opportunity to present a draft of the idea at the Peabody Colloquium Series on K-12 and Higher Education Policy. We also thank Derek Black and Warwick Mansell for reviewing the presentation and providing constructive feedback. Finally, we thank Idun Green for her helpful edits of drafts of this article.

** Ph.D. Student, Department of Educational Leadership, Neag School of Education, University of Connecticut.


EMOs and ATs frequently engage in related-party transactions for a number of services including educational technology, real estate, and consulting. Related-party transactions are business deals between companies with special, pre-existing relationships. These arrangements can occur, for example, between affiliated companies or a parent company and its subsidiaries. Although related-party transactions are legal, they can create harmful conflicts of interest. As a result, in both the charter and academy sectors, governmental entities have created monitoring systems to protect against wasteful and fraudulent related-party transactions.

However, despite the existence of these monitoring systems, numerous instances of problematic related-party transactions have occurred in charter schools and academies. Using comparative legal research methodologies, this article attempts to explain why the monitoring systems of each domain have such a difficult time regulating related-party transactions. Following an explanation of the methods, Section II investigates the prominent role EMOs and ATs play in the expansion of charter schools and academies. Subsequently, Section III examines data on EMO and AT engagement in related-party transactions and presents examples of EMOs and ATs abusing the legality of these transactions. These two sections together demonstrate the need to consider how these organizations are monitored. In Section IV we then analyze the current systems in place to monitor related-party transactions in charter schools and academies and make suggestions for improvement.

4. We discuss related-party transactions in charter schools and academies in more detail in Section II.
8. We analyze these related-party-transaction monitoring systems in Section III.
I. Methodology

To achieve the goals of this article, we apply the comparative legal research methodology of functionalism. Functionalism examines the approaches that different legal systems use to solve conflicts. This methodology looks for “functional equivalents” that countries have developed to solve a particular problem. Despite the countries’ legal differences, their solutions may be similar or even identical.

Functionalism is especially appropriate for the comparison made in this article because the United States and England have similar, common-law legal systems. However, merely comparing the legal rules for each country may be insufficient because of contextual differences. Therefore, we supplement the functional method by employing the law-in-context method. The goal of the law-in-context method is to discern how the different legal concepts work in practice. Thus, we have included analysis of the following materials: (1) educational, legal, and accounting research articles pertaining to charter schools and academies; (2) governmental reports and audits of charter schools and academies; and (3) media investigations of problematic related-party transactions in the charter school and academy sectors.

---

10. Id.
11. Id. at 10.
12. Id.
13. Id. at 3.
14. Van Hoecke, supra note 9, at 16.
15. Id.
II. The Role that EMOs and ATs Play in the Expansion of Charter Schools and Academies

A. Charter Schools

Since 1991, 44 states and the District of Columbia have passed charter school legislation. The argument for the initial creation of charter schools was that, with their greater flexibility, these schools could foster necessary innovations in the public education system. Charter schools operate under a contract, or charter, with a charter school authorizer. The charter specifies the organization and the management of the school as well as measures for academic success. There are more than 7,000 charter schools that educate more than 3 million students — 6% of the nation’s public-school population.

Charter schools have grown steadily over the past 10 years, adding 300 to 400 schools each year. EMO-operated charter schools have also become more prominent. EMOs are for-profit or non-profit companies that contract with charter school boards to provide educational and management services to charter schools. In 2009-10, EMOs managed around 30% of charter schools and educated 35% of charter school students.

18. Id.
19. Id.
23. BAKER & MIRON, supra note 2, at 7.
24. Id.
nationwide.\textsuperscript{25} In 2016-17, EMOs operated 35% of all charter schools, constituting 42% of enrollment.\textsuperscript{26}

The expansion of EMOs is not happenstance. In fact, charter-school proponents believe that EMOs can achieve expansion faster than stand-alone charter schools because of economies of scale and “the development expertise needed to secure financial expansion.”\textsuperscript{27} Philanthropic foundations have played a significant role in promoting the growth of EMO-run charter schools.\textsuperscript{28} In the 2000s, major philanthropic foundations in the US dramatically increased funding to EMOs while proportionately decreasing funding to traditional public schools.\textsuperscript{29} Specifically, recent evidence suggests that philanthropic foundations prefer to fund national-level advocacy and EMOs to stimulate charter school growth.\textsuperscript{30} However, due to the decentralized nature of the US education system, foundations also direct significant funds to state and local levels.\textsuperscript{31}

In addition to philanthropic organizations, the federal government has recently promoted the growth of EMOs through the Charter Schools Program (CSP), which allocates funding to expand the number of “high-quality” charter schools in the

\begin{thebibliography}{99}
\bibitem{gary} GARY MIRON & CHRISTOPHER SHANK, NEPC REVIEW: CHARTER MANAGEMENT ORGANIZATIONS 2017 (CREDO, JUNE 2017) 2 (Sep. 2017), https://nepc.colorado.edu/sites/default/files/reviews/TTR%20Miron%20CMOs_2.pdf [https://perma.cc/N6CL-7VWD].
\bibitem{id} Id. at 35.
\bibitem{id} Id.
\end{thebibliography}
country.\(^{32}\) In 2017, the federal government spent $253 million pursuant to the CSP.\(^{33}\) Of that amount, $52 million went to a newly created EMO-expansion program titled “Replication and Expansion of High-Quality Charter Schools.”\(^{34}\)

**B. Academies**

Academies were first introduced in 2000 as the City Academy Program.\(^{35}\) City academies were to replace locally run schools in urban areas that were deemed to be failing by the school inspection body Ofsted, or that were underachieving.\(^{36}\) The Education Act 2002 permitted academies to open outside of urban areas.\(^{37}\)

Eight years later, Parliament enacted the Academies Act 2010.\(^{38}\) This statute extended the academy option, until then limited to struggling schools, to include successful schools at both the primary and secondary levels.\(^{39}\) The government financed conversion costs and provided considerable financial

---


34. NAT’L ALLIANCE PUB. CHARTER SCHS., NATIONAL ALLIANCE CONGRATULATES RECIPIENTS OF 2017 U.S. DEPARTMENT OF EDUCATION CHARTER SCHOOL PROGRAM GRANTS (Sep. 28, 2017), https://info.publiccharters.org/2017-charter-schools-program-grants?ecid=ACsprvsAIIXN9g7hzoZquGUb7vhg8_grjBOOLxhu3fSKMBQX5Z-mjH8sdBH01pLY6nIC3k&utm_source=hs_email&utm_medium=email&h源于=2ANqtx-95MEMh60-wrUlyigAS50ZLtwVRXEKMYYACMPdlHBhrK9Hv2MmW9ad0tU_Mo8biadvKIjN5YduORZHj6xxV6iciASXDDRMc0t5R_0VJcCbuQ_jSv-8g [https://perma.cc/HME2-8EDC].


36. Id. at 144.

37. Id. at 145.


39. Id. § 3(1).
incentives to encourage schools to convert. The number of academies increased dramatically as a result of these policy changes. In 2010, there were 203 academies throughout England, all of them serving secondary schools with high proportions of disadvantaged students. As of December 2018, there were 8,333 academies, constituting 36.8% of England’s state funded schools. About 67% of England’s secondary schools and 30% of its primary schools have achieved academy status.

Academy trusts (ATs) run academies. ATs are nonprofit private trusts that enter into funding agreements with the Secretary of State for Education. Single academy trusts (SATs) “... run one academy and so have a single funding agreement with the Secretary.” Multi-academy trusts (MATs) run more than one academy “and so have both a master funding agreement with the Secretary... as well as a supplemental funding agreements for each academy.”

The English government has supported the growth of MATs in order to encourage the rapid expansion of academies. One strategy involved funding: “The more schools in [a MAT], the more funding was available for its central office activities.” This funding strategy worked. In 2012, there were 312 MATs, which ran 39% of all academies. By 2015, almost two-thirds of academies were in MATs, and 517 MATs had 2 to 5

---

41. Id.
43. Id.
44. DEPT FOR EDUC., GOVERNANCE HANDBOOK 2017, supra note 3, at 43.
45. Id.
46. Id.
47. Id.
48. LADD & FISKE, ENGLAND CONFRONTS THE LIMITS, supra note 40, at 6.
49. Id.
academies, 98 had 6 to 15, and 19 MATs were responsible for 16 or more academies.\textsuperscript{51} In 2017, MATs ran 73\% of all academies.\textsuperscript{52}

The role of MATs in academy expansion continues to be encouraged by the Department for Education (DfE), the governmental department responsible for education in England.\textsuperscript{53} In 2016, the DfE, announced its full-throttled support for MATs in a white paper titled \textit{Educational Excellence Everywhere}.\textsuperscript{54} This paper called for the academization of all English schools by 2022.\textsuperscript{55} Initially, the DfE intended this transition to be mandatory, but, following strong resistance, the DfE modified its approach to strong encouragement.\textsuperscript{56} The white paper declared that MATs were the mechanism for enabling the spread of academies because:

MATs are the only structures which formally bring together leadership, autonomy, funding and accountability across a group of academies in an enduring way, and are the best long term formal arrangement for stronger schools to support the improvement of weaker schools.\textsuperscript{57}

The DfE provided several rationales for declaring this belief. For instance, MATs would provide “improved opportunities and support for teachers” and “a broader curriculum and more opportunities for children.”\textsuperscript{58} MATs would also help build infrastructure by “expand[ing] the reach and influence of the most successful leaders” and offering “more senior roles and rapid progression opportunities” so that “the

\begin{itemize}
\item \textsuperscript{51} Id.
\item \textsuperscript{53} DEPT FOR EDUC., ABOUT US, https://www.gov.uk/organisation/department-for-education/about (last visited Mar. 30, 2019).
\item \textsuperscript{55} Id. at 15.
\item \textsuperscript{56} Andrew Eyles et al., \textit{Academies 2 – The New Batch: The Changing Nature of Academy Schools in England}, 39 FISCAL STUD. 121, 124 (2018).
\item \textsuperscript{57} DEPT FOR EDUC., EDUCATIONAL EXCELLENCE EVERYWHERE, supra note 54, at 57.
\item \textsuperscript{58} Id. at 16.
\end{itemize}
best leaders can play new, more influential roles across more schools.”

Moreover, the DfE claimed that MATs could expand into high need areas in a manner that the best local educational authorities never could.

III. EMOS, ATS, AND RELATED-PARTY TRANSACTIONS AND EXAMPLES OF ABUSE

A. Charter Schools

In the United States, there is no nationwide compilation of related-party transactions. However, the Grand Canyon Institute performed an analysis of related-party transactions in Arizona during the 2013-14 school year. This study found that 77% of the state’s charter schools had engaged in related-party transactions. Many of these transactions were between nonprofit EMOs and for-profit related-parties, which called into question the nonprofit nature of these EMOs. Furthermore, 48% of charter school expenditures for contracts, leases, and rents for that year were owed to for-profit related parties, totaling $497.5 million.

There have been many questionable related-party transactions involving real estate deals. For example, a for-
profit EMO named Charter Schools USA (“CSUSA”), which operates 49 charter schools in Florida, conducts its real estate deals through several affiliated businesses.\textsuperscript{66} The facilities costs for CSUSA-managed schools were 32\% of their budget—more than 13\% of the national average for charter school facilities costs.\textsuperscript{67}

The real estate deals between Imagine Schools, a non-profit EMO that operates more than 60 schools, and its for-profit affiliate, SchoolHouse Finance, are even more extreme. These charter schools can spend up to 40\% on rent, which creates a tight budget for educational necessities, such as textbooks.\textsuperscript{68} In \textit{Renaissance Academy for Math \& Science of Missouri v. Imagine Schools}, a federal judge ordered Imagine Schools to pay almost $1 million to one of its former schools for charging it excessive rent.\textsuperscript{69} The court’s ruling suggested that Imagine Schools was essentially taking advantage of the charter school: the EMO profited from the excessive rent and failed to tell the school’s board of directors how the cost might disrupt the school’s ability to pay for textbooks and teacher salaries.\textsuperscript{70}

An audit conducted by the U.S. Department of Education’s Office of the Inspector General (“OIG”), the federal agency’s watchdog, provided further evidence of the emerging danger.\textsuperscript{71} This audit, which assessed the risks posed by charter school
EMOs to the Department’s objectives, examined 33 charter schools from six states: California, Florida, Michigan, New York, Pennsylvania, and Texas. The OIG found 36 instances of internal control weaknesses—13 of these instances involved related-party transactions. These weaknesses were concerning because their presence increased the possibility of financial fraud and abuse, and additionally, they increased the risk that students would not receive services consistent with federal program objectives.

B. Academies

In contrast to charter schools, there are data regarding the scope of related-party transactions in the academy sector. These data show that related-party transactions are quite common. The Education Funding Agency (“EFA”), the agency responsible for academy oversight, found that 976 ATs—or 43%—had disclosed related-party transactions during the 2012-13 school year. These transactions totaled £71 million. In 2015-16,
1,155 ATs (40%) disclosed related-party transactions. These transactions increased to 3,033, totaling almost £121 million. Moreover, ATs had entered into 70 related-party transactions, each of which exceeded £250,000. These transactions amounted to almost £62 million.

The EFA began to record the frequency of related-party transactions in the academy sector because of the irregularities involving the Durand Academy Trust. This AT ran an early years center—comparable to pre-K—as well as a primary and secondary school. Because of problems revealed in the AT’s financial statements, the EFA investigated the trust’s related-party transactions. This investigation identified two particularly troubling arrangements. The first transaction was with a company owned by the executive head for the management of the AT’s leisure and accommodation facilities. This company received £790,000 for the management of these properties over a three-year period. The second involved a contract for public relations and communications with a company owned by one of the trustees. This company received £20,000 per month for its services. The EFA ordered the trust to terminate its contract with the executive head’s

78. Id.
79. Id.
80. Id.
82. Durand Academy, NAT’L AUDIT OFFICE, supra note 76, at 7. Because of concerns over finances and conflicts of interests, the Department for Education terminated its funding agreement with the Durand Academy Trust in 2018. Freddie Whittaker, Troubled Durand Academy Reopens as Van Gogh Primary, but Land Issues Continue, SCHS. WEEK. (Sep. 7, 2018), https://schoolsweek.co.uk/troubled-durand-academy-reopens-as-van-gogh-primary-but-land-issues-continue/ [https://perma.cc/7KT4-WAH3].
83. Durand Academy, NAT’L AUDIT OFFICE, supra note 76, at 5.
84. Id. at 15.
85. Id. at 12.
86. Id. at 16.
87. Id.
company. With respect to the trustee’s company, the EFA instructed the trust either to end the contract when it expired or conduct an open bidding process if the trust still needed the services.

The related-party transactions involving the Wakefield City Academies Trust (“WCAT”) also garnered much media attention. In 2015, this MAT, which sponsored 21 primary and secondary schools throughout Yorkshire, had received £10 million in funding from the DfE to set up “high-performing academy hubs in areas having some of the greatest need.” However, in the following year, the MAT came under scrutiny after it was revealed that it paid £440,000 to companies owned by the CEO and his daughter. The MAT declared in a statement that the contracts were appropriate because they had been put out to bid. However, a leaked DfE report identified 16 breaches of academy finance rules committed by WCAT, including the trust paying the CEO £82,000 for less than 15 weeks of work. This lack of governance and financial management put WCAT “in an extremely vulnerable

88. Durand Academy, NAT’L AUDIT OFFICE, supra note 76, at 21.
89. Id.
93. Id.
position.” In September 2017, WCAT declared that it was dissolving and ceasing the operation of its academy schools.

Parliament has expressed concerns about the EFA’s ability to police related-party transactions in the academy sector. For instance, in a 2014 report, the House of Commons Committee of Public Accounts expressed that the “Agency might not know the true extent of related-party transactions in all education providers—even if it implements sophisticated monitoring arrangements—in the same way that the accountability system in local authority settings might identify these transactions.” Similarly, a report commissioned by the Education Select Committee, published in the same year, concluded that “the checks and balances on academy trusts in relation to conflicts of interest are still too weak.”

Despite these concerns, the EFA has refused to outlaw related-party transactions. Instead, the agency has identified a number of benefits to these business deals. For instance, the EFA has asserted that related-party transactions can reduce costs through economies of scale. Specifically, the AT can achieve economies of scale by sharing services, such as facilities management services or catering or staffing. ATs can also benefit from the “in-house” expertise—especially in situations where the “trust is related to a recognized national lead in a given area.” It has also sought to improve the monitoring

---

95. Id.
100. Review of Related Party Transactions, supra note 75, at 21.
101. Id.
102. Id.
system of related-party transactions. We analyze these attempts in the following section.

IV. MONITORING OF RELATED-PARTY TRANSACTIONS BY CHARTER SCHOOLS AND ACADEMIES

A. Monitoring Systems for Related-Party Transactions in Charter Schools and Academies

Governmental entities have implemented monitoring systems to protect against the abuse of related-party transactions in the charter-school and academy sectors. Table 1 provides a depiction of these monitoring systems in tabular form.

Table 1: Monitoring Systems for Related-Party Transactions for Charter Schools and Academies

<table>
<thead>
<tr>
<th>Ensure that related-party transactions are properly documented and in the schools’ best interest</th>
<th>Charter Schools (States) (^{104})</th>
<th>Academies (National) (^{105})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review related party contracts for possible conflict of interest</td>
<td>Charter School Boards</td>
<td>AT Boards</td>
</tr>
<tr>
<td>Provide fiscal oversight to protect against related party transactions</td>
<td>Charter Authorizers</td>
<td>Education and Skills Funding Agency (ESFA)</td>
</tr>
</tbody>
</table>

---


\(^{104}\) Id. at 1142-57.

\(^{105}\) Durand Academy, NAT’L AUDIT OFFICE, supra note 76, at 25.
An examination of the related-party transaction monitoring systems for EMOs and ATs reveals noteworthy similarities. First, each system employs external auditors who are charged with ensuring that all related-party transactions are properly documented. Second, each monitoring system relies on governing boards that review related-party transactions for possible conflicts of interest. In the case of charter schools, the autonomous charter school boards that contract with the EMOs perform this function. The ATs perform this role in the academy monitoring system. Third, each monitoring system has entities that provide general fiscal oversight to protect against related-party transactions. In the case of charter schools, the charter authorizer plays that role. The Education and Skills Funding Agency (“ESFA”), a departmental agency sponsored by the DfE, performs this task for academies. Finally, each system has an entity that investigates allegations made by whistleblowers. In the charter school systems, charter school authorizers, state auditors, and state departments of education are responsible for these investigations. The ESFA and DfE perform this role with respect to academies.

It is also important to note that in the case of charter schools, the federal government has not played a prominent role in the policing of related-party transactions. The federal government has spent more than $4 billion since 1995 to encourage the growth of charter schools without emphasizing

<table>
<thead>
<tr>
<th>Investigate whistleblower allegations</th>
<th>Charter School Authorizers/State Regulatory Agencies</th>
<th>DfE, ESFA</th>
</tr>
</thead>
</table>

106. Green et al., supra note 103, at 1142-46; Durand Academy, NAT’L AUDIT OFF., supra note 76, at 25.
107. Green et al., supra note 103, at 1150-53.
108. Durand Academy, NAT’L AUDIT OFFICE, supra note 76, at 25.
109. Green et al., supra note 103, at 1150-53; Durand Academy, NAT’L AUDIT OFFICE, supra note 76, at 25.
110. Green et al., supra note 103, at 1150-53.
112. Durand Academy, NAT’L AUDIT OFFICE, supra note 76, at 25.
113. Id.
114. Green et al., supra note 103, at 1154-56.
115. Durand Academy, NAT’L AUDIT OFFICE, supra note 76, at 25.
The OIG signaled that it would take a more involved role in policing related-party transactions in its 2016 audit. In fact, the report made several suggestions for improving oversight of related-party transactions, including improving the Department’s monitoring of charter school-EMO relationships. However, President Donald Trump, who came into office after this audit was published, has expressed general displeasure of federal regulations. Moreover, his Secretary of Education, Betsy DeVos, has also displayed antipathy toward federal regulations. Therefore, we have not included the federal government as part of the charter-school, related-party-transaction monitoring system.

The remainder of this section analyzes the monitoring systems for protecting against the abuse of related-party transactions in the charter and academy sectors and makes suggestions for improvement.

B. Auditors

1. Charter Schools

Most charter laws require charter schools to submit to annual financial audits that comply with statutory or regulatory

---


117. Supra note 71, at 30-31.


Although state laws require auditors to be truly independent, there have been instances where auditors failed to detect problematic related-party transactions because they were under the control of the EMO. Therefore, charter authorizers must take special care to guarantee that auditors are actually independent.

Researchers have also advised auditors of charter schools to scrutinize related-party transactions for evidence of abuse. As Marie Blouin and Ronald Huefner observe: “In addition to traditional public school audit issues, charter school audits also require consideration of the appropriateness and review of contracts and transactions with the sponsoring organization,” and “conflicts of interest by board members, especially if they have ties to the sponsoring organization.” This focus would be consistent with the two main standards used by charter-school auditors: generally accepted auditing standards (“GAAS”), and generally accepted government auditing standards (“GAGAS”). Both standards require auditors to consider the possible risks of fraud intrinsic to the entities that they are investigating.

GAAS refers to the standards, established by the American Institute of Certified Public Accountants (AICPA), that apply to the “ordinary audit of financial statements by the independent auditor.” Statement on Auditing Standards (SAS) No. 99

120. See, e.g., ALA. CODE § 16-6F-6(g)(5) (2018) (requiring audits to comply with generally accepted accounting principles); ARK. CODE ANN. § 6-23-505 (Wet 2018) (requiring audits to comply with generally accepted auditing principles); CAL. EDUC. CODE § 47605(l) (West 2018) (requiring audits to comply with generally accepted accounting principles); COLO. REV. STAT. ANN. § 22-30.5-104(4)(a) (West 2018) (requiring audits to comply with state department of education requirements); DC CODE § 38.1802.04(c)(11)(B)(ix) (2018) (requiring audits to comply with standards issued by U.S. Comptroller General); HAW. REV. STAT. ANN. § 302D-32 (West 2018) (requiring audits to comply with standards set by authorizer and state department).

121. See Green et al., supra note 103, at 26 for examples.


123. Id.

124. Id.

requires auditors to conduct “brainstorming” sessions to determine how a client might be vulnerable to fraud.\textsuperscript{126} SAS 109 requires auditors to understand the entity and its environment, evaluate the attendant risks of material misstatements, and address significant risks that require special consideration.\textsuperscript{127}

Established by the U.S. Government Accountability Office (“GAO”), GAGAS sets the standards for auditors of governmental entities.\textsuperscript{128} GAGAS requires auditors to identify any “laws, regulations, contracts or grant agreements that are significant within the context of the audit objectives.”\textsuperscript{129} This consideration requires auditors to design auditing procedures “to obtain reasonable assurance of detecting instances of noncompliance.”\textsuperscript{130}

2. Academies

The \textit{Academies Financial Handbook}, which sets out the guidelines for the financial management of ATs, requires these entities to appoint an auditor to “certify whether their annual accounts present a true and fair view of the trust’s financial performance and position.”\textsuperscript{131} In 2013, the ESFA amended that \textit{Handbook} to require ATs to pay no more than the costs of goods provided by related parties.\textsuperscript{132} In 2014, the \textit{Handbook}

\begin{thebibliography}{9}
\bibitem{129} \textit{Id.} at 140.
\bibitem{130} \textit{Id.}
\bibitem{132} EDUC. FUNDING AGENCY, \textit{Academies Financial Handbook 2013: For Academy Trustees, Accounting Officers, Principal Financial Officers and
introduced a de minimis threshold of £2,500 on at-cost requirements that applied to related-party transactions.\textsuperscript{133} ATs had to pay no more than cost for any transaction above this limit.\textsuperscript{134} The National Audit Office (“NAO”)\textsuperscript{135}—Parliament’s auditing body\textsuperscript{136}—as well as Parliament\textsuperscript{137} have expressed doubt that auditors can enforce the at-cost policy. One concern is that it will be difficult for auditors to assess professional services, especially “where the academy is effectively buying an expert’s time and knowledge rather than goods with an historic cost.”\textsuperscript{138} Another problem that auditors face is that the at-cost policy can be subject to manipulation.\textsuperscript{139} Instead of enforcing the at-cost policy, we believe it would be wiser for auditors to develop protocols for identifying and scrutinizing particularly risky related-party transactions. This advice would be consistent with International Standard of Auditing 550—a standard that academy auditors must follow\textsuperscript{140}—which governs related-party transactions.\textsuperscript{141} As the standard explains, “an understanding of the entity’s related party relationships and transactions is relevant to the auditors’ evaluation of whether one or more fraud risk factors are present... because fraud may be more easily committed through related parties.”\textsuperscript{142}

\textsuperscript{133}\textsuperscript{} Id.
\textsuperscript{135}\textsuperscript{} Nat’l Audit Office, supra note 76, at 6.
\textsuperscript{136}\textsuperscript{} Nat’l Audit Office, About Us, https://www.nao.org.uk/about-us/
\textsuperscript{138}\textsuperscript{} Durand Academy, Nat’l Audit Office, supra note 76, at 6.
\textsuperscript{139}\textsuperscript{} House of Commons Comm. Pub. Accounts., supra note 137, at 5.
\textsuperscript{140}\textsuperscript{} Durand Academy, Nat’l Audit Office, supra note 76, at 9.
\textsuperscript{142}\textsuperscript{} Id. at 505-06.
We believe that auditors should pay particular attention to related-party transactions involving the senior executive leaders of ATs—these are principals for ATs and chief executive officers for MATs. According to the Handbook, these persons should serve as their trusts’ accounting officers. Accounting officers have a personal responsibility to Parliament and to the ESFA for the trusts’ finances. It is quite possible that senior executive leaders who are engaged in questionable related-party transactions might use their positions as accounting officers to cover their tracks.

C. Charter School and AT Boards

1. Charter School Governing Boards

Charter school governing boards are legally responsible for ensuring the fiscal soundness of their schools. However, charter school governing boards may be unprepared to fulfill this duty because they lack either the training or the independence to assess the related-party transactions of their EMO agents. In the Renaissance Academy for Math & Science case, for example, one board member testified at trial that he incorrectly believed that Imagine Schools had control over the board. This testimony led the district court to describe the member as being “very confused” about his board duties. The court also found that the governing board was subservient to Imagine Schools because the EMO had recruited the board members and had the board sign an operating agreement that allocated all tax revenues received by the board to the EMO.

---

143. EDUC. & SKILLS FUNDING AGENCY, ACADEMIES FINANCIAL HANDBOOK 2018, supra note 125, at 42.
144. Id. at 41.
145. Id.
146. Id. at 13.
149. Id. at 4.
150. Id.
Charter school statutes should address the board training problem by ensuring that board members receive training with respect to their supervisory responsibilities. Indeed, 13 states require governing boards to receive training: Colorado, Delaware, Florida, Georgia, Massachusetts, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, Tennessee, Texas, and Wisconsin. Five of these states—Delaware, Florida, Minnesota, New Mexico, and Texas—specifically include coverage of financial management in their training provisions. In addition to training requirements, states should require governing boards to possess expertise in financial management. Only three states—Hawaii, Louisiana, and South Carolina—impose this requirement on their charter school governing boards.

Charter school laws should also guarantee that governing boards are structurally independent from EMOs. Nine states do provide this guarantee. These states are Colorado, Connecticut, Illinois, Indiana, Maine, Michigan, Minnesota, Mississippi, and South Carolina.
Mississippi, \(^\text{178}\) Nevada, \(^\text{179}\) and Rhode Island, \(^\text{180}\) Further, several of these states provide indicia for determining whether a charter school governing board is independent from its EMO:

1) The EMO must not select the members of the governing board; \(^\text{181}\)

2) The governing board must select, retain, and compensate the attorney and auditing firm representing the board; \(^\text{182}\)

3) The governing board and the EMO must reach the terms of the service contract through arms-length negotiations; and \(^\text{183}\)

4) The EMO must not have control over financial decisions. \(^\text{184}\)

Charter school board principals may also fail at assessing the related-party transactions of EMOs because board members have related-party transactions with the charter schools for which they are responsible. Initially, such business arrangements may not seem problematic because, typically, under nonprofit corporations law, members of these boards can recuse themselves from decisions to enter into business arrangements with their companies. However, one wonders whether charter school boards can carry out their fiduciary duties with respect to the EMO if they also have business arrangements with the charter school. Might they be so distracted by their own financial interests that they fail to police the behavior of the EMO?

The predicament of PA Cyber Charter School (PA Cyber) illustrates this concern. At its peak, PA Cyber had an enrollment of more than 11,000 students across the state. \(^\text{185}\) An audit conducted by the state auditor general revealed that the charter school paid the EMO that provided curriculum and

\begin{footnotesize}
\begin{itemize}
\item \(^\text{177}\) MICH. COMP. LAWS ANN. § 380.507(1)(f) (West 2018).
\item \(^\text{178}\) 10-402 MISS. CODE R. § 1.12(D) (West 2018).
\item \(^\text{179}\) NEV. REV. STAT. § 388A.393(1)(a) (West 2018).
\item \(^\text{180}\) R.I. Reg. Text 496815 (West 2018).
\item \(^\text{181}\) 05-071 ME. CODE R. Ch. 140, § 2(8)(A) (West 2018).
\item \(^\text{182}\) CONN. GEN. STAT. ANN. § 10-66tt(e); 05-071 ME. CODE R. Ch. 140, § 2(8)(B); R.I. Reg. Text 496815.
\item \(^\text{183}\) IND. CODE ANN.; § 20-24-3-2.5(4); 05-071 ME. CODE R. Ch. 140, § 2(8)(C); 10-402 MISS. CODE R. § 1.12(D)(1).
\item \(^\text{184}\) NEV. REV. STAT. § 388A.393(1)(a).
\end{itemize}
\end{footnotesize}
management services to the schools more than $153 million from 2011 to 2014, which amounted to nearly half of the school’s annual budget. The auditing office was especially critical of the terms of the management services agreement between the charter school and the EMO. Instead of using a cost-based fee formula, the agreement stipulated that the EMO would receive 12 percent of the charter school’s revenues received from the state and enrolling school districts. By not basing payment on actual costs, the state auditor declared that the fee structure weakened the level of accountability demanded of the EMO. The auditing office also found that board members had related-party transactions that compromised their ability to provide oversight over the management company. For instance, a board member’s son was a director of operations for the EMO. Another board member was a co-owner of a computer equipment company that was paid $1.1 million from the charter school.

The state auditor general expressed displeasure that neither the state’s charter school law nor its ethics statute prohibited governing board members from simultaneously serving as officers and board members of companies that were providing services to PA Cyber. As he explained, “such situations provide an appearance of a conflict of interest that should be mitigated.” One of the solutions that the auditor general suggested to fix this problem was to make charter school boards publicly elected.

---

187. Id. at 29.
188. Id.
189. Id.
190. Id.
191. PENNSYLVANIA CYBER CHARTER SCHOOL, supra note 186, at 19.
192. Id. at 21.
193. Id. at 17.
195. PA. DEP’T AUDITOR GEN., AUDITOR GENERAL DEPASQUALE SAYS AUDITS OF PA CYBER CHARTER SCHOOL, TWO OTHER SCHOOLS REAFFIRM NEED TO OVERHAUL
would counter the specific oversight problem that occurred in the case of PA Cyber: i.e., board members who might have failed to provide oversight over the EMO because they too were benefiting from related-party transactions with the charter school. Rather, legislatures should consider prohibiting board members from engaging in related-party transactions with the charter schools for which they are responsible. Indeed, two states—Minnesota\textsuperscript{196} and New Mexico\textsuperscript{197}—have addressed this concern by prohibiting persons from serving on a governing board if they or their immediate family members own or have a significant stake in any entity providing “professional services, goods, or facilities” to the charter school.

2. Academies

AT governing boards have the responsibility of “ensuring resources are allocated to strategic priorities and safeguarding the highest standards of highest priority”—this responsibility encompasses related-party transactions.\textsuperscript{198} The Handbook commands boards to meet this duty by ensuring that “requirements for managing related party transactions are applied across the trust” and by “manag[ing] personal relationships with related parties to avoid real and perceived conflicts of interest.”\textsuperscript{199}

There have been a number of instances in which trustees of MATs have benefited from questionable related-party transactions between the MATs and the businesses that they run.\textsuperscript{200} The Bright Tribe Multi-Academy Trust is an egregious

\begin{footnotesize}
\footnotesize
\textsuperscript{196} MINN. STAT. ANN. § 124E.07(subdiv. 3)(a) (West 2018).
\textsuperscript{197} N.M. STAT. ANN. § 22-8B-5.2(A) (West 2018).
\textsuperscript{198} DEP’T FOR EDUC., GOVERNANCE HANDBOOK 2017, supra note 3, at 4.
\textsuperscript{199} EDUC. & SKILLS FUND, AGENCY, ACADEMIES FINANCIAL HANDBOOK 2018, supra note 131, at 30.
\end{footnotesize}
example. This MAT, which ran 10 academy schools, paid companies owned by its director £3.9 million in 2016 and £681,000 in 2017.\footnote{Helen Ward, Exclusive: Bright Tribe Pays £680K in Related-Party Transactions, TES (Jan. 31, 2018), https://www.tes.com/news/exclusive-bright-tribe-pays-ps680k-related-party-transactions [https://perma.cc/ZAS8-HHXY].} A governmental investigation of the MAT revealed that 80% of its governors had engaged in related-party transactions.\footnote{Pippa Allen-Kinros, Embattled Bright Tribe Academy Trust to Close, SCHS. WEEK. (July 16, 2018), https://schoolsweek.co.uk/embattled-bright-tribe-academy-trust-to-close/ [https://perma.cc/ND75-B53S].} Arrangements such as this one raise doubts as to whether board members are fulfilling their responsibility to protect the financial interests of their MATs.

The Handbook further advises trustees to refer to the guidance provided by the Charity Commission,\footnote{Supra note 131, at 10.} the regulatory body for all charities in England and Wales.\footnote{CHARTY COMM’N FOR ENGLAND & WALES, ABOUT US, https://www.gov.uk/government/organisations/charity-commission/about [https://perma.cc/J3ZT-3FDD] (last visited March 30, 2019).} The Charity Commission’s document titled The Essential Trustee: What You Need to Know, What You Need to Do provides that the actions a board takes with respect to related-party transactions depends “on the circumstances and the seriousness of the conflict of interest.”\footnote{CHARITY COMM’N FOR ENGLAND & WALES, THE ESSENTIAL TRUSTEE: WHAT YOU NEED TO KNOW, WHAT YOU NEED TO DO 18 (May 3, 2018), https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/the-essential-trustee-what-you-need-to-know-what-you-need-to-do [https://perma.cc/29F5-WPGX].} Generally, the affected trustee should be absent from any part of the meeting where the issue is being discussed.\footnote{Id.} The affected trustee should withdraw from any decision-making on that issue.\footnote{Id.}

However, Gillian Allcroft, the Deputy Chief Executive of the National Governance Association (“NGA”)—an independent charity that seeks to increase the effectiveness of AT governing boards\footnote{NAT’L. GOV. ASS’N., WELCOME TO THE NATIONAL GOVERNANCE ASSOCIATION, https://www.nga.org.uk/Home.aspx [https://perma.cc/8Z9B-8S5D] (last visited March 30, 2019).}—doubts whether this approach is sufficient in situations that “involve significant financial
transactions and family ties.**209 As she explains (from the perspective of an AT board):

If you award a firm closely associated with a trustee a contract will you genuinely be able to demonstrate that you weren’t influenced by her/his status? … The truth is regardless of how stringent you have been with your processes the perception that the trustee has benefited will linger. Alternatively, you may unconsciously look for reasons not to award the trustee’s firm the contract to avoid such a charge—but they have may have been the best provider. Neither outcome is satisfactory. Better not to put oneself in that position in the first place.**210

The guidance provided by the Charity Commission lends some support to Allcroft’s skepticism. For example, *The Essential Trustee* advises that in cases involving serious conflicts, the company should take one of the following actions: (1) obtain permission from the Commission; (2) refrain from going forward with the conflict; or (3) require the trustee to resign.**211 Similarly, the Commission’s document titled *Conflicts of Interest: A Guide for Charity Trustees* provides that in situations involving serious conflicts of interest, charity boards should remove the conflict by: (1) “not pursuing the course of action”; (2) “proceeding with the issue in a different way so that the conflict of interest does not arise”; or (3) “not appointing a particular trustee or securing a trustee resignation.”**212

As noted above, in the United States charter-school context, two states have found that related-party transactions between board members or their immediate families are so serious that they cannot be resolved by having the affected members absent themselves from discussions and excuse themselves from deliberations. Instead, these states have banned such persons from serving on charter school governing boards. Given the

---

210. Id.
211. **CHARITY COMM’N FOR ENGLAND & WALES, THE ESSENTIAL TRUSTEE, supra** note 205.
concerns raised about related-party transactions compromising the ability of AT boards to act as fiscal stewards, Parliament might consider imposing a similar ban.

One might ask why we would call for Parliament to consider banning related-party transactions for AT board members, but not call for a similar ban on the AT’s senior executives. We respond by acknowledging that related-party transactions can provide opportunities for ATs to obtain economies of scale and in-house expertise. But we also recognize that a core function of AT boards is “to oversee financial performance and make sure money is well spent.” If evidence suggests that related-party transactions are compromising the ability of boards to carry out this duty, then a ban would be appropriate.

C. Authorizers & ESFA

1. Charter Schools

Charter school authorizers review applications to determine whether to grant charters, monitor the schools for which they are responsible, and decide whether to revoke or renew charters. Charter school authorizers are “ultimately responsible for the fiscal oversight of each charter school they oversee.” Their duty to ensure the fiscal health of charter schools extends “from application approval to oversight and monitoring to closure or renewal.”

Consequently, authorizers play a pivotal role in guarding against unreasonable related-party transactions between EMOs

---

217. Id.
and for-profit related parties. However, only two states—California and Connecticut—explicitly empower authorizers to review and approve these business arrangements. On that date, the law stipulates that petitions for charter school applications, renewals or material revisions “shall not operate as, or be operated by . . . a for-profit educational management organization.” The law defines the term “operate as, or be operated by” to encompass the day-to-day management of a charter school. The statute forbids charter schools from entering into subcontracts “to avoid the requirements of this paragraph.” Consequently, this law appears to prevent nonprofit EMOs from contracting with for-profit related-parties for day-to-day operations. Connecticut’s administrative code places a number of limitations on related-party transactions. These transactions are permissive under the following conditions:

[T]he costs incurred are (1) limited to the actual cost of goods or services; (2) applicable, appropriate and necessary to the transaction; and (3) do not exceed the fair market rate or value that a prudent person in a non-related party transaction would incur under the circumstances prevailing at the time.

We have two concerns with California’s approach. First, we oppose the idea of banning related-party transactions involving for-profit entities. Although we are concerned with the abuse of these types of contractual arrangements, we cannot rule out the possibility that in some instances, a related-party transaction might constitute the best deal for the charter school.

---

219. See generally CAL. EDUC. CODE § 47604 (West 2019); C.G.S.A. §§ 10-66m-1-10-66mm-7 (West 2019).
221. Id.
222. Id. § (2)(A)(iii).
223. Id. § (2)(B).
225. See C.G.S.A. §§ 10-66m-10-7mm.
226. C.G.S.A. § 10-66mm-5(c).
Second, we find it troubling that California’s provision addresses only contracts that deal with day-to-day management. Thus, this language may fail to address other potential areas of abuse, such as real estate. Instead, the bill provides that these business agreements fall under the responsibility of charter school boards. As we have explained above, states should provide boards with training that addresses related-party transactions so that they can be up to this task.

By contrast, Connecticut’s regulations provide better guidance for its authorizer, the state department of education. By instructing the department to examine the appropriateness and necessity of the related-party transaction and to ensure that each transaction does not exceed fair market value, the regulations call for the authorizer to guard against abuse while allowing for the possibility that the transaction might provide the best goods or services to the charter school. However, we advise other states to be wary of adopting Connecticut’s at-cost requirement because of the concerns raised with respect to academies.

2. Academies

The ESFA is responsible for providing financial oversight over academy schools. This responsibility includes related-party transactions. In 2013, the Handbook required academy trusts (ATs) to obtain approval for related-party transactions that were “novel” or “contentious.” Novel transactions “are those in which the academy trust has no experience, or are outside the range of normal business activity for the trust.” Contentious transactions are “those which might give rise to criticism of the

---

227. See Section III(B)(1).
228. See Section III(C)(1).
229. See CAL. EDUC. CODE § 47604(2)(A).
230. See CONN. AGENCIES REGS. § 10-66mm-5.
232. Durand Academy, NAT’L AUDIT OFFICE, supra note 76, at 25.
233. EDUC. FUNDING AGENCY, ACADEMIES FINANCIAL HANDBOOK 2013, supra note 132, at 22-23.
234. Id. at 22.
trust by the public or the media.\textsuperscript{235} In 2017, the Handbook was amended to include “repercussive transactions”—“those which are likely to cause pressure on other trusts to take a similar approach and hence have wider financial implications.”\textsuperscript{236}

The House of Commons expressed dissatisfaction with this line of review, noting that “[i]n practice this means that the majority of day to day related party transactions require no prior approval.”\textsuperscript{237} Indeed, this legislative body expressed the concern that the ESFA only became aware of most related-party transactions when it reviewed the annual accounts.\textsuperscript{238} To prevent the abuse of related-party transactions, the House of Commons recommended that the ESFA amend the Handbook to prohibit ATs from entering into related-party transactions without the agency’s approval.\textsuperscript{239} The ESFA did not adopt the House of Commons’ blanket recommendation to approve all related-party transactions—probably because of the sheer size of the academy sector. However, the agency did decide to impose a requirement, starting in April 2019, that ATs must obtain prior approval from the ESFA for contracts with a related party if a single contract, or the sum of all contracts with that party in the same financial year exceed £20,000.\textsuperscript{240}

The ESFA £20,000-threshold requirement for targeting related-party transactions is an improvement over the agency’s policy requiring the review of novel, contentious, or repercussive transactions. First, the monetary threshold policy will actually trigger a review of related-party transactions in a way that the prior policy did not. Second, by setting a monetary threshold before conducting a review of the transactions

\textsuperscript{235} Id. at 23.
\textsuperscript{238} Id.
\textsuperscript{239} Id. at 5.
\textsuperscript{240} EDUC & SKILLS FUNDING AGENCY, ACADEMIES FINANCIAL HANDBOOK 2018, supra note 131, at 31.
between an AT and a related party, the ESFA has taken steps to avoid being overextended.

D. Charter School Authorizers/State Level Auditor & ESFA

1. Charter Schools

Charter school monitoring systems authorize regulatory agencies, including state departments of education and state auditors, to conduct investigations when they receive notice of possible abuses of related-party transactions. These entities rely heavily on whistleblowers to provide them with information. Therefore, state legislatures should consider instituting approaches that would motivate whistleblowers to expose wasteful or fraudulent related-party transactions.

Two federal statutes show that state legislatures could encourage whistleblowers to come forward by offering them financial awards. The first statute is the False Claims Act (FCA), which imposes liability on any person who “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval.” The FCA encourages whistleblowers to bring civil actions, or qui tam lawsuits, on behalf of the federal government. Whistleblowers can obtain a bounty ranging from 15% to 25% of the government’s recovery.

The second statute is the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Enacted in response to the financial crisis of 2008, this statute seeks to prevent another economic meltdown by placing more stringent

---

241. Green et al., supra note 103 at 28-30.
245. 31 U.S.C.A. § 3730(b)(1), (c).
246. 31 U.S.C.A. § 3730(d).
regulations on lenders and banks. Dodd-Frank also encourages whistleblowers to expose violations of U.S. securities laws through the establishment of a whistleblower incentive program. Administered by the Securities and Exchange Commission (SEC), the whistleblower program gives financial awards to whistleblowers for original information that leads to monetary sanctions in excess of $1 million. Whistleblower awards range from 10% to 30% of the sanction amount.

Both the FCA and Dodd-Frank protect whistleblowers from retaliatory actions from their employers, such as discharge, demotion, suspension, threats, or harassments, or any other discrimination. These statutes also provide several remedies for whistleblowers including reinstatement, double back pay, litigation costs, and attorneys’ fees.

The financial awards provided by the FCA and Dodd-Frank have enabled the federal government to recover a great deal of money. In 2017, the federal government recovered $3.7 billion in settlements and judgments pursuant to the False Claims Act; $3.4 billion came from qui tam lawsuits. The financial incentives of the federal False Claims Act have been so successful that more than 50% of states have enacted their own false claims acts. Since 2011, the Dodd-Frank whistleblowing incentive program has led to the imposition of $1.5 billion in monetary sanctions.

250. 15 U.S.C.A § 78u-6(a)(1).
251. 15 U.S.C.A § 78u-6(b)(1).
257. Jason Zuckerman & Matt Stock, One Billion Reasons Why the SEC Whistleblower Reward Program Is Effective, FORBES (July 18, 2017),
Taking impetus from the FCA and Dodd-Frank, state legislatures should consider developing whistleblower incentive programs for their charter schools. Specifically, these programs would do the following: (1) provide financial awards to whistleblowers for coming forward with information that would lead to a successful recovery of public funds; and (2) protect whistleblowers from retaliatory employment actions by charter schools, EMOs, or their affiliates.

Charter school investigatory bodies should also target certain types of related-party transactions for periodic reviews. For example, evidence suggests that related-party transactions involving real estate poses a problem to the charter school sector.\(^\text{258}\) To combat such abuse, investigatory bodies can periodically examine the real estate deals to which charter schools have entered.

2. Academies

The ESFA investigates financial irregularities in the academy sector including those involving related-party transactions. Similar to charter schools, the ESFA relies on whistleblower revelations.\(^\text{259}\) In fact, a freedom of information request revealed that from 2013 to 2017, whistleblowers triggered 14 out of 15 investigations into academy finances.\(^\text{260}\) Thus, we examine the incentives provided for whistleblowers to come forward with respect to AT whistleblowers.

The Public Interest Disclosure Act (PIDA) 1998\(^\text{261}\) and the Enterprise and Regulatory Reform (ERRA) 2013\(^\text{262}\) protect

\(^{258}\) See Section II(A)(1).
\(^{259}\) Durand Academy, NAT’L AUDIT OFFICE, supra note 76, at 25.
\(^{260}\) Jess Staufenberg, Over 90% of Investigations into Academy Finances Are a Result of Whistleblowers, SCH. WEEK (July 10, 2017), https://schoolsweek.co.uk/over-90-of-investigations-into-academy-finances-are-a-result-of-whistleblowers/ [https://perma.cc/8LFA-VVMQ].
“workers” who make disclosures in the public interest from dismissal and detrimental treatment. To receive protection, workers must reasonably believe that they are making disclosures in the public interest. Protected disclosures include criminal offenses, failure to comply with legal obligations, and the concealment of these actions. Workers who believe they have suffered from retaliation may seek financial compensation from an employment tribunal.

Neither the PIDA nor the ERRA includes a whistleblower incentive program similar to Dodd Frank or the FCA. After the passage of the ERRA, the U.K. government in 2013 initiated a call for evidence to determine whether it should make other changes in its whistleblowing framework. The call considered, inter alia, whether the U.K. should provide financial incentives to whistleblowers. A year later, the government issued a response rejecting the adoption of financial incentives. Although the government “remained unconvinced that the introduction of financial incentives would change the cultural landscape in a positive way,” it did allow that “in due course,” it would consider employing financial incentives “in specific organisations or in very specific types of cases.”

Given the number of questionable related-party transactions occurring within academy trusts, the government might consider adopting a whistleblower incentive program for this sector.

Furthermore, the ESFA should not wait for whistleblowers to provide information for investigations. We suggest that once an AT crosses the £20,000 threshold for transactions with a related company, which would require approval from the ESFA, the agency should conduct periodic reviews of that business relationship. In 2016, Sir Amyas Morse, the Auditor General of the NAO, provided support for this suggestion during a House

263. Id. at § 17.
265. Id. at § 3.
267. Id. at 19.
268. Id. at 20.
269. Id. at 25.
of Commons Education Committee discussing the financial management of the DfE.\textsuperscript{270} Morse called for the DfE and the ESFA to develop a number of “leading indicators” that would cause the agency to investigate an AT.\textsuperscript{271} One example for further scrutiny involved situations where “there were a lot of apparent conflict of interest issues to be managed.”\textsuperscript{272}

CONCLUSION

Related-party transactions involving private companies and their for-profit affiliates have bedeviled both U.S. charter schools and England’s academies. Using comparative legal research methodologies, this article has attempted to determine why the respective monitoring systems have had a difficult time regulating related-party transactions and offer suggestions for improvement. Because our review has found such remarkable similarities between the monitoring systems for charter schools and academies, it is unsurprising that the recommendations for improving these monitoring systems are so similar.

\textsuperscript{270} See generally Education Committee, Financial Management at the Department for Education, 2016, HC 203 (UK).
\textsuperscript{271} Id. at Q112.
\textsuperscript{272} Id.