

Subcontracting funding summit

5 July 2019

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LEARNING & SKILLS
EVENTS, CONSULTANCY & TRAINING

Agenda

10.30 Subcontracting rules
Nick Linford

11:10 Ofsted's approach to sub-contracting and best practice
Richard Beynon HMI, specialist adviser FE & Skills, Ofsted

11:50 Break for refreshments and networking

12:10 Managing new and existing subcontracting relationships ~ *getting due diligence and contracting right*
Mark Taylor, Partner, Corporate Education, Eversheds Sutherland

13:00 Break for lunch and networking time

14:00 Funding, data and compliance: Audit advice for prime and sub-contractors
Karl Bentley, Funding auditor, RSM

15:00 What does the longer term future of EFA and SFA subcontracting look like (incl. RoAPT)?
Nick Linford

15:30 Prime and subcontracting networking time

Subcontracting rules

Nick Linford

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LET'S START WITH THE
BREAKING NEWS!

You are not alone...

According to ESFA figures for 2017/18, there were over 3,292 subcontracting contracts involving 516 main contractors and 1,032 subcontractors (worth close to £1bn)



ESFA funded adult education budget (AEB): funding and performance management rules 2019 to 2020

For the 2019 to 2020 funding year (1 August 2019 to 31 July 2020).

This document sets out the funding rules that apply to all providers of education and training who receive adult education budget funding from the Education and Skills Funding Agency

Version 2

July 2019

1

AEB version 2 published yesterday

Page 84 lists main changes

“We have revised the sub contracting section rules. Please ensure you read this section carefully.”

Pages 22 to 30

<https://www.gov.uk/government/publications/adult-education-budget-aeb-funding-rules-2019-to-2020>

“We expect providers to maximise the amount of funding that reaches front line delivery of high quality learning.”

105. You must include in your contract with each delivery subcontractor:

105.1. reference to your delivery subcontracting policy and where it can be found on your website

105.2. your reason for subcontracting with them

105.3. a list of all services you will provide to them and the associated costs for doing so. This must include a list of individually itemised, specific costs for managing the subcontractor, specific costs for quality monitoring activities and specific costs for any other support activities offered by you to the subcontractor

105.4. a description of how each specific cost is reasonable and proportionate to delivery of the subcontracted teaching or learning and how each cost contributes to delivering high quality learning

Published subcontracting policy (public)

REMOVED: “As a minimum, you must include the following in your delivery subcontracting fees and charges policy: the typical percentage range of fees you retain to manage delivery subcontractors, and how you calculate this range”

NEW (para 115): “for each subcontractor, you must include how you will determine a detailed list of your specific costs for managing them, specific costs for quality monitoring activities and specific costs for any other support activities offered by you to the subcontractor”

NEW (para 115): “for each subcontractor, you must include how you will determine each cost is reasonable and proportionate to delivery of their teaching or learning and how each cost contributes to delivering high quality learning.”

<https://www.gov.uk/government/publications/adult-education-budget-aeb-funding-rules-2019-to-2020>

Tactical subcontracting of AEB still not allowed

83. Your governing body or board of directors and your accounting officer (senior responsible person) must agree your policy for delivery subcontracting. This policy must set out your reasons for subcontracting and that all your delivery subcontracting meets your strategic aims and enhances the quality of your learner offer. You must be able to confirm this by way of evidence, such as minutes of meetings and/or written sign-off. The minimum content for your policy for delivery subcontracting is set out in **paragraph 115**

85. You must not subcontract for delivery to meet short-term funding objectives.

<https://www.gov.uk/government/publications/adult-education-budget-aeb-funding-rules-2019-to-2020>

CLARIFICATION VERSION OF 2019 TO 2020 RULES

**Education & Skills
Funding Agency**

Apprenticeship funding rules for main providers

August 2019 to July 2020

Clarification version

This document sets out the funding rules for all main providers delivering apprenticeship from 1 August 2019 to 31 July 2020.

We are issuing these funding rules as a clarification version to give you the opportunity provide feedback on how we can make them clearer or better understood. Please email suggestions to fundingrules.comments@education.gov.uk by Friday 12th July 2019. Following a review of any feedback, we will then issue a final version of the rules in July reflect any areas of clarification.

[View other apprenticeship funding rules](#)

July 2019
Of interest to colleges, independent training providers, higher education institutions and employers delivering training to staff outside of their organisation.

**Education & Skills
Funding Agency**

Apprenticeship funding rules August 2019 to July 2020

Summary of changes

Introduction

- This document sets out amendments to the following documents:
 - Apprenticeship funding rules and guidance for employers August 2018 to July 2019 version 2
 - Apprenticeship funding rules for employer-providers August 2018 to July 2019 version 2
 - Apprenticeship funding rules for training providers August 2018 to July 2019 version 2
- The funding rules form part of the terms and conditions for the use of funds in an employer's apprenticeship service account or for government employer co-investment. You must read them in conjunction with your funding agreement with the Secretary of State for Education (acting through the Education and Skills Funding Agency (the ESFA), an executive agency of the Department for Education).
- These rules will apply to all apprenticeship programmes starting on or after 1 August 2019. Unless otherwise stated, this includes both apprenticeship frameworks and standards.
- We have identified the rules in the 2019 to 2020 funding rules clarification version that have changed from the 2018 to 2019 funding rules in the table below. The employer, employer-provider and provider paragraph numbers are denoted with the prefix E, EP or P respectively.
- This document is intended as a summary and does not replace the funding rules themselves. You should refer to the main funding rules document for the definitive rules.

Summary Note:

Apprenticeship 'clarification version' published yesterday

**“There are no
major policy
changes”**

**“New Rule: A statement
of expectations is
required when working
with subcontractors”**

P169, 178, 179.8, 189

<https://www.gov.uk/guidance/apprenticeship-funding-rules>

Contracting and subcontracting

New for 1 August 2019:

- P169, P178, P179(h), P189** – New Rules: A statement of expectations is required when working with subcontractors
- P171**– New Rule: Updated to show the types of delivery subcontractors that can be used
- P192 to P194** – Change to existing rule: Updated to reflect RoATP conditions

P189 Your contract must make a clear reference to the up-to-date written agreement you have in place with each employer and include a breakdown of all the agreed services and costs.

<https://www.gov.uk/guidance/apprenticeship-funding-rules>

P178 You must clearly describe to each employer and potential subcontractor, before each subcontracting relationship is agreed the reason for subcontracting and all services you will provide and the associated costs when doing so. This must include a list of **specific costs** for managing the subcontractor; **specific costs** for quality monitoring activities and **specific costs** for any other support activities offered by you to the subcontractor. All of these costs must be individually itemised and describe how each cost contributes to delivering high quality training. You must also explain how such costs are reasonable and proportionate to delivery of the subcontracted apprenticeship training.

P179h A detailed description of how the funding retained for each activity detailed contributes to delivering high quality training and how the funding retained is reasonable and proportionate to delivery of the apprenticeship training described.

<https://www.gov.uk/guidance/apprenticeship-funding-rules>

P171 You must only use delivery subcontractors that satisfy one of the following two criteria:

(a) they are on the published Register of Apprenticeship Training Providers and have applied by the main or supporting application routes; or

(b) they are either the apprentice's employer, a connected company or charity as defined by HMRC and are on the published Register of Apprenticeship Training Providers, having applied through the employer-provider application route.

<https://www.gov.uk/guidance/apprenticeship-funding-rules>

P192 Delivery subcontractors who have successfully applied to the supporting application route of the Register of Apprenticeship Training Providers must not receive more than £500,000, or £100,000 if the delivery subcontractor is identified as new, of apprenticeship funding for their delivery from 1 April to 31 March each year.

P193 You must ensure that you are not one of a number of organisations making payments to any supporting provider that exceed £500,000, or £100,000 if the delivery subcontractor is identified as new, in any one year. We will place restrictions on your future use of delivery subcontractors if this happens.

<https://www.gov.uk/guidance/apprenticeship-funding-rules>

The ‘token’ para has not changed...

P166 At the outset of each apprenticeship, a main provider and employer will agree a plan for its delivery. You must directly deliver some of the apprenticeship training and/or on-programme assessment associated with **each employer’s apprenticeship programme**. By apprenticeship programme we mean the apprentices that are being trained for the employer that has chosen you. The volume of training and/or on programme assessment that you directly deliver for each employer must have some substance and **must not be a token amount** to satisfy this rule. It must not be limited to a brief input at the start of each employer’s programme or involve delivery to just a few of a large number of apprentices.

<https://www.gov.uk/guidance/apprenticeship-funding-rules>



Using subcontractors in the delivery of apprenticeships
Policy background and examples

April 2018

Of interest to apprenticeship training providers.

1

How much of an employer's apprenticeship training and/or on-programme assessment must be delivered by a main provider for it to have some substance and be more than a token amount?

“We do not define or quantify ‘substance’ in absolute terms. We also do not define a point in time at which the level of substance should be measured. This is because an employer's apprenticeship programme may well evolve over time, with a varying nature and scale as apprentices start and finish their programmes. We do not expect auditors to determine compliance with this rule against an arbitrary quantification of ‘substance’.”

<https://www.gov.uk/government/publications/apprenticeships-subcontracting>

16-19 study programme subcontracting



Funding guidance for young people 2019 to 2020

Subcontracting control regulations

July 2019

“From 2019, the ESFA will introduce an annual review of subcontracting for all providers (referred to as institutions in our 16-19 study programme funding stream) who subcontract. This will look across all the ESFA programmes including 16-19 funding, the Adult Education Budget, Apprenticeships, and the European Social Fund. It will protect students by looking for signs of non-compliance and checking with directly funded institutions that the rules are being followed.”

<https://www.gov.uk/government/publications/funding-guidance-for-young-people-sub-contracting-controls>

16-19 study programme subcontracting

“We are considering whether to put in place more formal requirements for institutions to agree distance subcontracting arrangements with the ESFA in future years.”

“When FE institutions make distance subcontracting arrangements, they must exercise the same procedures and controls as for local subcontracting. They must also:

- have auditable evidence of the exceptional circumstances that make the distance subcontracting necessary
- consider the funding implications and assure itself that the arrangement will comply with all guidance in advance of any recruitment (for example, the principles of funding and the design of study programmes set out in Funding regulations)
- keep evidence that they are properly and effectively monitoring and controlling the provision and safeguarding the students as set out in this guidance.”

<https://www.gov.uk/government/publications/funding-guidance-for-young-people-sub-contracting-controls>

12 July declaration deadline

The screenshot shows a web browser window with the URL <https://www.gov.uk/government/publications/esfa-update-26-june-2019/esfa-update-further-edu...>. The page title is "ESFA Update further education". The main heading is "1. Action: subcontractor declaration for adult delivery, including apprenticeships and traineeships". The text states: "Organisations delivering ESFA funded adult programmes, including all apprenticeships and traineeships, must declare their subcontracting arrangements by Friday 12 July 2019." It also mentions: "This is the first collection for levy and non-levy funded apprenticeship delivery for the year from April 2019 to March 2020 and the second collection for all other adult delivery for the year from August 2018 to July 2019." The process for collecting subcontractor declarations is through the "Manage your education and skills funding service (MYESF)". It lists the roles needed to complete and submit a declaration: contract authoriser, contract manager, and data returns and claims authoriser. It also provides a link to check "user roles and permissions in MYESF" and a contact email: SDE.servicedesk@education.gov.uk. A table of contents is visible on the left side of the page.

<https://www.gov.uk/government/publications/esfa-update-26-june-2019/esfa-update-further-education-26-june-2019#action-subcontractor-declaration-for-adult-delivery-including-apprenticeships-and-traineeships>

Inspecting subcontracted provision in further education and skills

Richard Beynon HMI
Specialist Adviser – Further Education and Skills



July 2019

Slide 19

Session outline

- Our focus on subcontractors
- Approaches to inspecting and reporting on the achievement of learners and apprentices in subcontracted provision

Session outline

Slide 20

Inspecting subcontractors

- We will normally inspect providers that have:
 - direct funding from ESFA
 - an advanced learner loans facility from ESFA
 - adult education funding from Greater London Authority (GLA) and/or one of the mayoral and combined authorities (MCAs)
 - apprenticeship training provision funded through the apprenticeship levy.
- Subcontracted provision that is part of the directly funded provider's responsibility.
- Ofsted reserves the right to inspect and grade any subcontractor and its provision as a separate entity against the EIF and this handbook.

Inspecting subcontractors

Slide 21

Validated outcomes data

| | Cohort 15-16 | QAR | Cohort 16-17 | QAR | Cohort 17-18 | QAR |
|----------------------------|--------------|-----|--------------|-----|--------------|-----|
| Boxed Training | 6 | 50% | 8 | 38% | 24 | 17% |
| Clear Training UK | 595 | 86% | 598 | 75% | 509 | 47% |
| Input Services | 150 | 96% | 184 | 90% | 332 | 93% |
| Tidy Progress | 157 | 58% | 106 | 34% | 309 | 19% |
| Roadside Training | 166 | 73% | 108 | 71% | 112 | 74% |
| Anything Everywhere | 10 | 0% | 55 | 14% | 88 | 0% |

Validated outcomes data

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What inspectors may ask provider:



The pre-inspection analysis may include:

- To what extent do the provider's leaders and managers evaluate accurately the subcontracted provision?
- Where improvements are required, how diligently do leaders and managers follow these up and what is the impact of any improvements?
- To what extent do the provider's leaders and managers support their subcontractors to help them improve? What do they do if they don't improve?

Emerging questions

Slide 23

What inspectors may ask provider:



- How good is the quality of subcontracted quality of education, including for English and mathematics?
- What is the standard of learners' work?
- Are the current learners at the subcontractor making good progress? If not, what action is being taken?

Emerging questions

Slide 24

What inspectors may ask provider:



- Do subcontractors' managers and teachers monitor learners' attendance and what do they do if they are absent?
- How effectively are subcontractors' leaders and managers ensuring learners are safe, and to what extent do they share safeguarding concerns and incidents with the provider?
- How effective is the 'service level agreement' or 'contract' at holding subcontractors to account?

Emerging questions

Slide 25

Deep dives



- When inspecting subcontracted provision, it is important that we acquire a breadth of evidence and make clear and succinct judgements based on agreed inspection activities.
- All aspects may not be able to be covered realistically throughout the inspection week. Inspectors and providers should consider using webinar, telephone conference and other remote activities to extend the 'reach'.
- Inspectors and providers should ensure that the inspection covers all provision types where there are subcontractors.
- Providers and inspectors should ensure access to learner/apprentice portfolios (work scrutiny) to triangulate judgements.

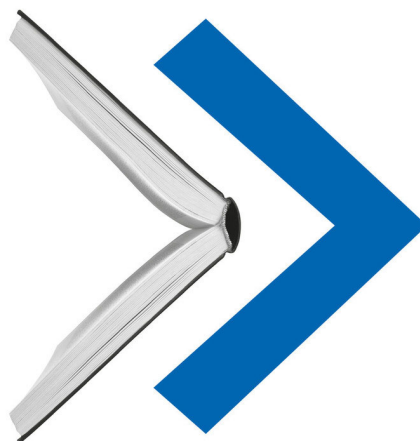
Sampling

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**Managing new and existing
sub-contracting relationships – *getting it right***

Mark Taylor
Partner



Managing Sub-Contracting in FE

The importance of getting it right

The Importance of Getting it Right

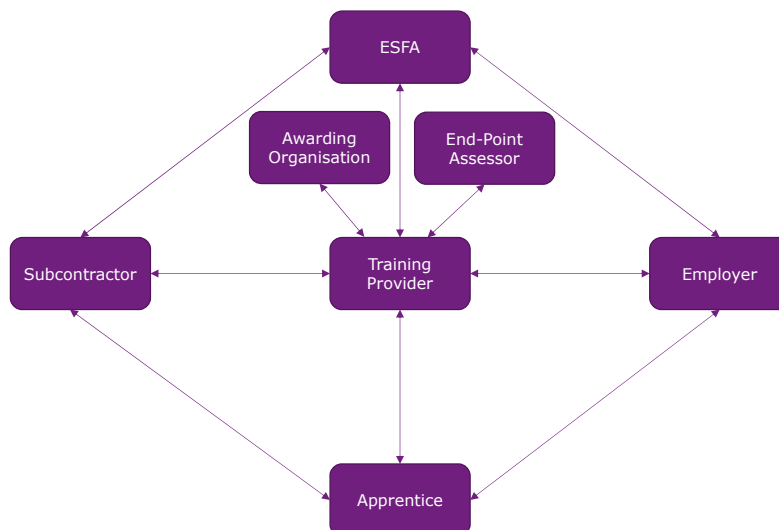
- Challenging times in the FE sector
- Anticipate and avoid problems by:-
 - choosing the right partner
 - minimising risk through the contract terms
 - practical and effective disputes resolution
- Provide structure for effective relationship management



Recent(ish) changes

- The apprenticeship levy
- Register of Apprenticeship Training Providers (RoATP)
- MORE funding rules (eg different rules for adult education budget and apprenticeship funding)
- Limitation on apprenticeship subcontracting

Contracting Relationships



Eversheds Sutherland

| 08 July 2019 |

Apprenticeship Delivery Contracts with Employers

Managing Sub-Contracting in FE

Choosing the right partner

Choosing the right Partner

- Absolutely vital to effective contracting
- Type of Due Diligence
 - Legal
 - Financial
 - Commercial/operational
- Scope of Due Diligence

Choosing the right Partner

- ESFA funding guidance
 - ensure the subcontractor has sufficient capacity, capability, quality and financial standing to deliver provision
- Pre-qualification process (previously Due Diligence Assurance Gateway)
- Sub-Contractor Declaration Form
- Prepare audit trail

Managing Sub-Contracting in FE

The Terms of the Sub-Contract

The Terms of the Sub-Contract

- Who is contracting?
- Back to back obligations/risks
- Incorporate the funding obligations?
- ESFA obligations
 - effective monitoring and control over subcontractor
 - provision of information and access
 - mandatory terms
 - ESF funds



The Terms of the Sub-Contract

- Educational oversight – who wears the trousers?
- Clear quality standards & performance levels
- Audit & inspection rights
- Contract/performance review meetings
- Creation and maintenance of records required
- Oblige provision of information
- Provide specific details of the information required (what, when and how frequently)

The Terms of the Sub-Contract

- Duration
 - Fixed term
 - Rolling contract?
- Termination
 - Expiry
 - Breach - right to remedy?
 - Insolvency
 - Significant changes in funding requirements
 - On notice
- Intervention/step in

The Terms of the Sub-Contract

- What's this going to cost us?
- Clear payment amounts (or formulae) and details of payment dates
- Clear invoicing requirements



The Terms of the Sub-Contract

- Other legal terms to include in your subcontract
 - Data Protection Act compliance (including GDPR)
 - safeguarding
 - intellectual property
 - FOIA assistance
 - confidentiality
 - health and safety

The Terms of the Sub-Contract

If things go wrong:

- Ensure reporting requirements provide enough information to spot areas of concern
- Warranties/indemnities/guarantees
- Set out how disputes should be resolved
- Insurance obligations
- Teach out – contingency plan
- Recovery of materials and learner data
- Assistance for apprentices who are made redundant

Key challenges/disputes

- Withholding payment for breach of terms can amount to repudiatory breach of contract itself
- Subcontractors often fail to provide all learner records and data – can use this as a bargaining tool to secure further payment
- If fraud issues are detected may need to involve the Police and/or ESFA
- Once terminated:
 - often subcontractors experience financial difficulty/go bust;
 - can be very difficult to obtain copy records to prevent ESFA clawback;
 - additional costs involved with taking on learners or transferring to new provider;
 - may have to liaise with an insolvency practitioner re records/missed payments.
- Reputational issues

Top tips for dealing with key challenges/disputes

- Read termination and dispute resolution mechanisms carefully before taking action
- Consider whether there is an ability to re-negotiate or agree exit arrangements
- Fraud issues - may need to provide records to the police consider data protection obligations
- Consider if missing data may be obtained from third parties eg learners, examination boards, ESFA
- Maintain adequate audit trail throughout to reduce risk of clawback

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This information pack is intended as a guide only. Whilst the information it contains is believed to be correct, it is not a substitute for appropriate legal advice. Eversheds Sutherland (International) LLP can take no responsibility for actions taken based on the information contained in this pack.

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Subcontracting: Funding, Data and Compliance

AUDIT | TAX | CONSULTING



Rules

The rules for subcontracting can be found in

Funding Guidance for Young People 2018 to 2019 - Subcontracting control Regulations

Adult Education Budget: funding and performance management rules – specifically paragraph 84 to 117.7

Apprenticeship funding rules for training providers August 2018 to July 2019 paragraphs P157 to P192

Apprenticeship funding: rules for employer-providers August 2018-July 2019 paragraphs EP142 to EP172

Advanced Learner Loans funding and performance management rules paragraph 25



What is subcontracting?

ESFA AEB Definition

- We define a delivery subcontractor as a separate legal entity that has an agreement with you to deliver any element of the education and training we fund. A separate legal entity includes companies in your group, other associated companies and sole traders. It also includes individuals who are self-employed or supplied by an employment agency, unless those individuals are working under your direction and control, in the same way as your own employees.

ESFA Young People Definition

- 10. Subcontracted delivery is defined as provision delivered by a third party organisation with whom the institution directly funded by the ESFA has entered into contractual arrangements for the delivery of a proportion of the education provision funded by the ESFA, and for which payments are dependent on student numbers and/or formula funding values.

Advanced Learner Loans Definition

- A separate legal entity that has an agreement with you to deliver any element of the education and training we fund or which is funded through Advanced Learning Loans. A separate legal entity includes companies in your group, other associated companies and sole traders. It also includes individuals who are self-employed or supplied by an employment agency, unless those individuals are working under your direction and control, in the same way as your own employees.



What is subcontracting

So if you don't manage and direct the staff delivering or you're paying for activity that's linked to the funding values it will be defined as subcontracting

Subsidiary companies are now also considered subcontracted activity so take care when considering who is delivering and who holds the contract. You may inadvertently find yourself second tier subcontracting

And don't forget...

- You are responsible for all the actions of your delivery subcontractors connected to, or arising out of, the delivery of the services which you subcontract.

So is it worth the risk?



Key consideration for AEB

Tactical versus strategic or triangle vs. parallelogram...

- 87. You must not subcontract to meet short-term funding objectives.
- 110. You must provide a fully completed subcontractor declaration by the dates we will give you. This will be at least twice during the 2018 to 2019 funding year. If you do not make the declaration on time, we will suspend your payments. If you do not subcontract, you must still provide a nil return to confirm this.
- 111. You must also update your subcontractor declaration if your subcontracting arrangements change during the year.

So.... If you have subcontractors only appearing on a second or later submitted declaration with all activity planned to be completed by the end of the year regardless of start date you may get some difficult questions



Requirement for Subcontracting Audit

ESFA still require a 'controls' audit of subcontracting where the prime has over £100,000 of subcontracting across all contracts (planned or actual depending if either exceed £100,000)

- Guidance is rolling on this
- Certificate should be submitted to ESFA by 31 July 2019
- Covers all AEB and Apprenticeship activity (FM35, 36 and 81)
- 16-19 study programmes (FM25) still not in scope at this time



What we find - general

- Continued growth of subcontracting after Ofsted Inadequate grade or inadequate financial health assessment and no agreement with ESFA
- No assessment process as part of due diligence – still folders of documents with no decision making process. Why are you working with that organisation?
- Governors not consulted on subcontracted arrangements or lack of approval
- Lack of reporting to Governors on progress against contracts
- Incomplete or incorrect declarations
- Fees and charges policy not reviewed or updated on website



What we find - general

- Subcontractors not being monitored – notably where provision is residual
- Still a reluctance to visit to provision delivered at a distance
- Lack of due diligence where consultants are used – are they truly independent?
- Contracts not signed even though provision has been running for several months
- Provision in ILR not covered by the contract e.g. 16-18 activity on an AEB only contract
- Prevent not being covered



What we find – FM36 specific

- Levy and non-levy contracts with employers not setting out subcontracting requirements
- Lack of evidence to demonstrate that the prime is delivering something of substance and more than a 'token amount'
- Lack of evidence to demonstrate the prime has a relationship with the employer and is 'leading'



ESFA Funding Audit approach (D11)

Approach for 2018/19 has seen some revisions

- UKPRN on ILR reconciles to submitted Declaration
- Name of subcontractor reconciles to UKRLP website name
- Subcontractor is on ROTO where £100,000 is delivered across all contracts
- Legally binding contract in place
- All required clauses included in the contract
- Procedures for monitoring including ESF match funding requirements
- Second tier subcontracting



ESFA Funding Audit Approach (D11)

New tests specifically for 16-19 study programmes

- If the provider recruits or delivers 16 to 19 study programmes as part of a distant subcontracting arrangement, has it satisfied all requirements set out in the funding regulations? (Paragraph 44-45 of 16-19 Subcontracting regulations)
- If the provider is a college subcontracting with a special school to deliver the whole, or a substantial part, of study programmes for learners aged 19 to 25, can it demonstrate that it is not subcontracting new provision? (Paragraph 32 to 38)
- If the provider is a college with an existing subcontracting arrangement with a special school to deliver the whole, or a substantial part, of study programmes for learners aged 19 to 25, can it demonstrate that it has notified the ESFA of this provision? (Paragraph 40)



FM36 Subcontracting (D12)

For 2018/19 there is also a separate audit approach for FM36 apprenticeships

- Has the training provider/employer-provider recorded the subcontractor on its Declaration?
- Is the subcontractor on the published register of apprenticeship training providers if it is delivering more than £100k of apprenticeship training and on-programme assessment under contract across all main providers and employer-providers between 1 April 2018 and 31 March 2019?
- If the subcontractor is a supporting provider, is it on the register from the supporting application route of apprenticeship training providers and is it in receipt of no more than £500k of funding for its delivery from 1 April to 31 March each year from any organisation (note that for the first year, this was 1 May 2017 to 31 March 2018)?



FM36 Subcontracting (D12)

- Is there a signed written agreement in place with each employer and are all the mandatory requirements set out in the agreement?
- Have any instances of inconsistencies in applying the funding rules by the subcontractor been reported to the ESFA?
- Are any changes in delivery arrangements agreed with the employer (and duly recorded within the written agreement the provider has with the employer where applicable)?



FM36 Subcontracting (D12)

- If the subcontractor is an employer-provider, is there evidence of the actual costs of delivery of apprenticeship training and on-programme assessment delivered by the employer-provider?
- Does the training provider/employer-provider directly deliver apprenticeship training and/or on-programme assessment of some substance in volume?
- Are all delivery subcontractors contracted with the training provider directly and does it lead the relationship with the relevant employer?



ESF match funding requirements (D13)

ESF match funding requirements are also tested as part of subcontracting testing

- Have the provider and its subcontractors displayed ESF posters prominently in their premises?
- Have the provider and its subcontractors displayed the current ESF logo on their websites?
- Have the provider and its subcontractors displayed the current ESF logo on their learner enrolment documentation and training materials?
- Do the provider and its subcontractors inform learners that they are on an ESFA-funded programme which the ESFA could use as ESF match, meaning that it is part-funded by ESF?



ESF match funding requirements (D13)

- Do the provider and its subcontractors have a document retention policy for ensuring that all documents necessary to verify ESF funded provision are retained in line with contractual requirements (currently until at least 31 December 2030 for the 2014 to 2020 ESF programme)?
- Do the provider and its subcontractors have in place a gender equality and equal opportunities policy and action plan and a policy for sustainable development (including an environmental implementation plan)?

For the various policies we are required to see the policy or confirmation that they have 'signed-up' to the Prime's policy



ESFA Funding Audit - Subcontracting

AEB and Apprenticeships

- Subcontracting declarations not completed fully
- UKPRN not recorded on the ILR where subcontracting is taking place
- Incorrect UKPRN recorded on the ILR when compared to UKRLP and declaration
- Subcontractor name on declaration not reconciling to UKRLP website
- Contracts not signed or missing required clauses
- No monitoring of subcontractors
- ESF requirements not being met – missing policies and logos



ESFA Funding Audit - Subcontracting

16-18 Subcontracted Provision

- Planned hours recorded on the ILR where evidence is not retained by the prime – how were the original hours validated?
- Lack of monitoring of provision especially where it is at distance from the prime
- 16-18 learners enrolled on traditional distance learning AEB provision – insufficient evidence to support hours claimed



QUESTIONS
AND ANSWERS?



THANK YOU FOR
YOUR TIME AND
ATTENTION

Contact me at Karl.Bentley@rsmuk.com or on 07800 617220



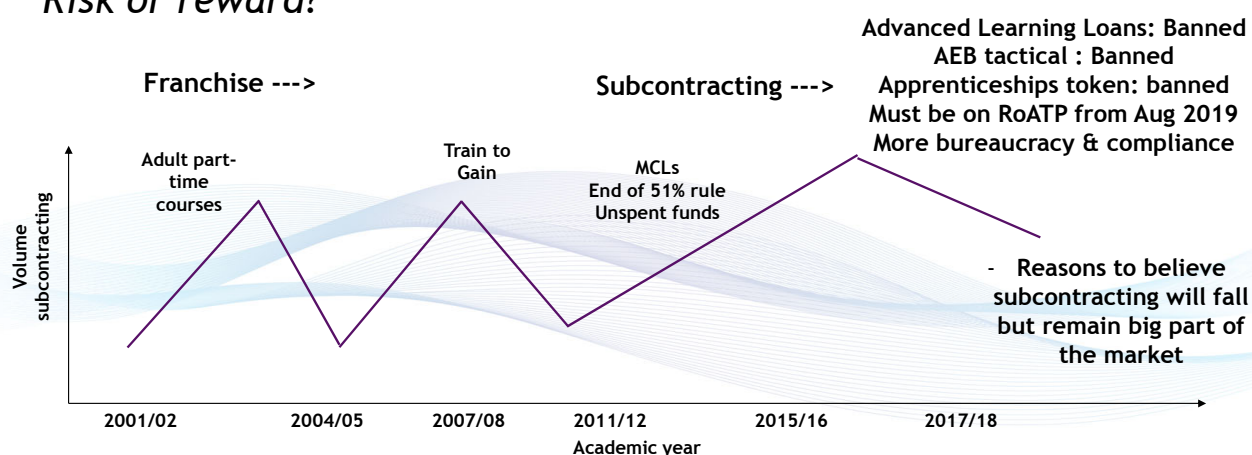
What does the longer term future subcontracting look like?

Nick Linford

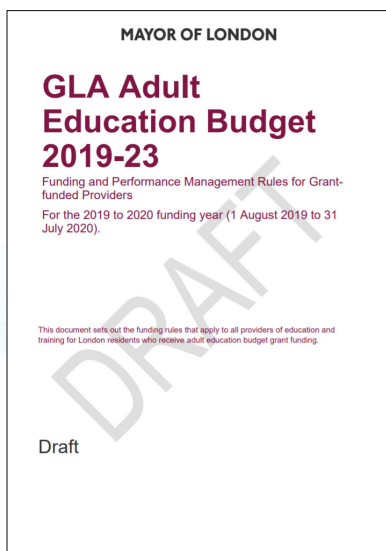
LSECT
LEARNING & SKILLS
EVENTS, CONSULTANCY & TRAINING

The history and future of subcontracting

Risk or reward?



Adult Education Budget devolution



“As a minimum, you must include the following in your delivery subcontracting funding retention policy:

the typical percentage range of funding you retain to manage delivery subcontractors, and how you calculate this range. We will consider a retention of up to 20% of funding to manage delivery subcontractors as a maximum cap and would not expect providers to retain more than this. In exceptional cases, we will consider higher retention amounts and then only if there is a compelling rationale. This will be assessed on a case-by-case basis”

So will the GLA and other MCAs follow the ESFA and move away from a % management fee?

https://www.london.gov.uk/sites/default/files/aeb_funding_and_performance_mgmt_rules.pdf

Beware - ESFA forcing employers to become subbies

Apprenticeship funding rules: **“You must not offset the negotiated price with the costs of any service provided by the employer.** If the employer is legitimately delivering relevant training or an eligible cost supported by these rules then this must be included into the overall price. The cost of the apprenticeship must be transparent.”

Off-the-job guidance: **“A training provider must not offset the negotiated price with the costs of any relevant service provided by the employer; this includes training delivery.** If the employer is legitimately delivering off-the-job training, without which the apprenticeship could not be completed, then this must be included into the overall price and **the employer becomes a delivery subcontractor.** The subcontracting funding rules apply and there is additional guidance that may be helpful.

<https://www.gov.uk/government/publications/apprenticeships-off-the-job-training>

https://www.london.gov.uk/sites/default/files/aeb_funding_and_performance_mgmt_rules.pdf

New annual review?...

“From 2019, the ESFA will introduce an annual review of subcontracting for all providers who subcontract. This will look across all the ESFA programmes including 16-19 funding, the Adult Education Budget, Apprenticeships, and the European Social Fund. It will protect students by looking for signs of non-compliance and checking with main providers that the rules are being followed..”

<https://www.gov.uk/government/publications/adult-education-budget-aeb-funding-rules-2019-to-2020>

‘Associate partnership’ deals...

Just say no

Final Q&A

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