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Summit agenda

10:30 | The new ESFA subcontracting standard and rule changes for 2022/23

Nick Linford, Apprenticeship and FE funding expert

11:10 | Managing new and existing subcontracting relationships

Mark Taylor, Partner, Corporate Education, Eversheds Sutherland

11:50 | Comfort break

12:10 | Funding, data and compliance: Audit advice

Karl Bentley, senior ILR and funding auditor from RSM

13:00 | Lunch Break

14:00 | Ofsted's approach in 2022/23 to sub-contracting and best practice

Paul Joyce, Deputy Director, Further Education & Skills, Ofsted

15:00 | The future of subcontracting, beyond 2022/23

Nick Linford

15:30 | Summit end

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The new ESFA subcontracting standard and rule changes for 2022/23

LSECT
LEARNING & SKILLS
EVENTS, CONSULTANCY & TRAINING

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Funding rules (excl. apprenticeships)

“Although this document represents a comprehensive set of subcontracting funding rules across the AEB, ESF and 16 to 19 funding streams it should be viewed in context of the wider funding rules for each individual funding stream”

“Subcontracting in any given funding stream may only be up to 25% of that funding stream unless the express permission of ESFA has been sought and granted via an exemption case. ESF and LA's are exempt from this rule.”


Education & Skills
Funding Agency

Subcontracting funding rules for ESFA funded post-16 funding (excluding apprenticeships)

For the 2022 to 2023 funding year (1 August 2022 to 31 July 2023) This document sets out the subcontracting funding rules that apply to all providers of education and training who receive AEB, ESF and 16 to 19 funding from Education and Skills Funding Agency

April 2022

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1099083/Subcontracting_funding_rules_for_ESFA_funded_post-16_funding_excluding_apprenticeships_2022_to_2023.pdf

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Apprenticeship subcontracting

Document updated this summer

“The main provider has full responsibility for the quality of all aspects of every apprenticeship delivered for the employer and is required to carry out formal assessments of their subcontractors’ provision. **The main provider is also required to deliver some of the employer’s apprenticeship programme’s training and/or on-programme assessment.**”

“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 include delivery of off the-job training (i.e., new knowledge, skills, and behaviours relevant to the standard). 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. It does not include simply delivering English or maths, elements only taught by online or by distance learning, or aspects of the apprenticeship which all apprentices must have, such as safeguarding or British values.”



Using subcontractors in the delivery of apprenticeships

Policy background and examples of interest to apprenticeship training providers

July 2022

<https://www.gov.uk/government/publications/apprenticeships-subcontracting#full-publication-update-history>

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Apprenticeship funding ruled

Only change is to meet the new standard...

Contracting and subcontracting

New for 1 August 2022

P198 - New rule: In accordance with your ESFA contract(s), you must meet the ESFA subcontracting standard as detailed in the subcontracting standard guidance (the auditors guidance is currently in development and an update will follow). The external audit report must now be submitted via the ESFA document exchange (rather than by email). **Updated for version 1.**

Glossary: Please note the definitions for subcontracting and subcontractor in the glossary have been updated.



Apprenticeship funding rules for main providers

August 2022 to July 2023

Version 2

This document sets out the funding rules for all main providers delivering apprenticeships from 1 August 2022 to 31 July 2023.

[View other apprenticeship funding rules](#)

September 2022

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

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1109627/2223_Provider_Rules_Version_2_Final.pdf

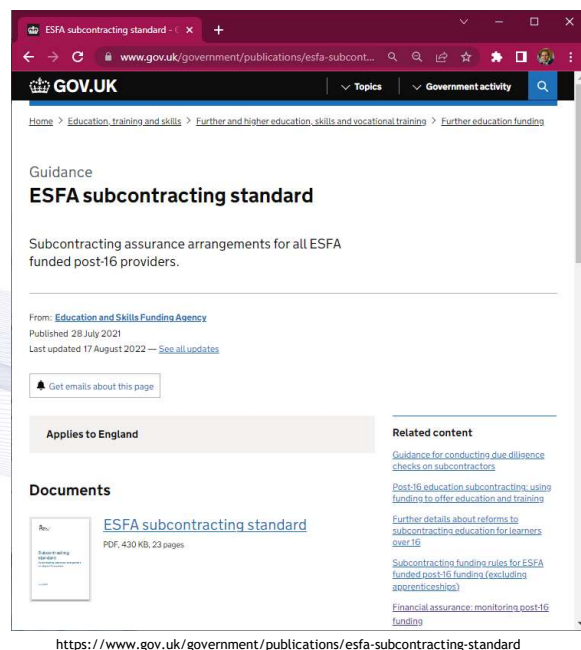
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The new ESFA subcontracting standard

“Following a consultation on the subcontracting reform in 2020, ESFA confirmed that it will introduce an externally assessed standard for subcontracting - it published a new subcontracting standard (“the standard”) on 28 July 2021.

Applicable from 01 August 2022, the standard is designed to mitigate the risk of inadequate (contract) management of subcontractors; non-compliance with ESFA funding rules by subcontractors; and fraudulent and incorrect funding claims.”

Important overriding principle: Each lead provider and subcontractor must have a valid UK Provider Registration Number (UKPRN).



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The Standard

23 pages

The Standard has been introduced for 2022/23 and the new external assurance act as a “license to subcontract”, “for all providers who subcontract £100,000 or more of their delivery, across all ESFA funding streams (apprenticeship, AEB, ESF or 16-19)”.

“The ESFA understands that a one-size fits all approach is inappropriate in relation to the application of the standard. The standard and auditor guidance are designed to be reasonable and proportionate.”

“This new framework will ensure that there is a clear and consistent approach for the (contract) management of subcontractors by lead providers and that there are robust **assurance review arrangements.**”



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Assurance review arrangements

44 pages!

“This framework and guide sets out the requirements and provides guidance on reviews of subcontracting arrangements at ‘lead’ providers, and their application of the subcontracting standard, by reporting accountants.”

“The purpose of this document is to help providers and their reporting accountants to:

- understand ESFA’s expectations in terms of reasonableness and proportionality
- provide examples of evidence requirements and expectations
- understand the process as to how the standard will be achieved
- know what is required if the standard is not achieved in relation to the reporting accountant’s report as to the provider’s compliance with the subcontracting standard.”



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

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The 10 assurance review considerations pages

The 10 assurance review sections	self-assessment areas
1. Pre-award activities	13
2. Contract award and management	11
3. People	6
4. Administration	7
5. Managing relationships	9
6. Managing performance	10
7. Payments and incentives	5
8. Risk management	10
9. Contract development and/or termination	12
10. Provider development	8
Total	91

“There are ten sections (components) of the subcontracting standard where we require the reporting accountant to apply a RAG* (*red, amber, green) rating to each subsection, based on the work undertaken”

The provider should record (91 times):

> “a narrative description of the process or control that is in place, which demonstrates the providers’ compliance with each point within the standard; and

> the description of the evidence that the provider has available to support the process or control described (it is entirely reasonable that one process and/or supporting evidence could support compliance for multiple elements of the standard)”

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

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Reporting accountant

“ESFA recognises it is the responsibility of the reporting accountant to design their work programmes. However, ESFA expects these programmes to contain elements of controls and compliance testing, as well as ILR / learner level testing of subcontracted provision.”

Upon completion of their review, the reporting accountant must prepare and agree their report with the provider. Once agreed the reporting accountant must submit the report to the provider, which will submit to ESFA, alongside the required declaration at Annex B

Approach

[Outline the approach and procedures performed i.e., enquiries of management, document review, learner sampling etc. to identify the detailed findings.]

Detailed findings and recommendations

Our detailed observations and recommendations are recorded below:

Area of standard	Finding / observation / issue	Risk/ Implication	Recommendation / Action to be undertaken	RAG Rating	Response from the provider	Responsible Officer & Target Date
2.1 CM	[Nature of finding/ exception]	Insufficient evidence to demonstrate section 2.1 of the standard.	The provider should retain evidence to support...		Disagreed, supplementary evidence submitted to ESFA alongside report.	Jane Smith 01 April 2023
2.1 CM	[Nature of finding/ exception]	Insufficient evidence to demonstrate section 2.1 of the standard.			Agreed	Jules Smith 01 April 2023
3.1 People	[Nature of finding/ exception]	No evidence to demonstrate compliance with section 3.1 of the standard.			Agreed	Janice Smith 01 April 2023
3.2 People	[Nature of finding/ exception]	No evidence to demonstrate compliance with section 3.2 of the standard.			Agreed	Jack Smith 01 April 2023

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

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Timing and assessment

The provider will need to decide at what point in the funding year it will engage a reporting accountant. Once the report has been received by ESFA and it has been determined that the standard has been achieved, then this achievement will remain in place for three years unless there are material increases in the volume, material changes in operational or leadership staff or any significant concerns that have been brought to ESFA's attention.

ESFA assessment

20. Upon receipt of the finalised report ESFA will review the report's findings, together with other relevant information, including locally held intelligence, to determine whether the provider has:

- achieved the standard
- not achieved the standard, but would be able to do so, if a series of identified actions are completed, which will demonstrate compliance with the standard. In this scenario the provider will be advised of the timeframe to demonstrate completion of the actions by ESFA
- not achieved the standard and are required to cease subcontracting activities, until ESFA is satisfied that the standard has been reached. This could mean that further audit work is required to substantiate this
- not achieved the standard and due to significant concerns identified either by the reporting accountant or by ESFA results in a permanent cessation of subcontracting

21. Within approximately twelve weeks of receiving the report the provider will receive a response with the outcome of ESFA's assessment and, if applicable, any actions required to achieve the standard. All actions will include a clear timeframe and will identify whether independent verification that the action has been completed is required by the reporting accountant, who provided the report.

22. Any provider which fails to submit a report by 31 July of the year where the report is required will automatically be in breach of the requirements of the standard (and their contract) and will be informed by ESFA how this breach will impact on their subcontracted provision.

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Pre-award activities			
1.1	There is a clear educational rationale/business case for subcontracting which aligns to the provider's corporate and operational strategies. We would expect the business case to set out the policy, business and operational objectives including consultation with stakeholders and undertaking research to determine the education rationale. This rationale must consider the expectation ESFA has for providers to reduce their subcontracted provision. We would also expect the business case to be presented and approved at executive/board level for sign off.		
1.2	The education rationale meets one or more of the following aims: <ul style="list-style-type: none"> enhances the opportunities available for learners; fills gaps in niche or expert provision or provides better access to training facilities; supports better geographical access for learners; offers an entry point for disadvantaged groups; or gives consideration of the impact on individuals with shared protected characteristics, where there might otherwise be gaps. 		
1.3	The drafting process for the specification and requirements. This drafting process is concerned with breaking down the overall scope documented as part of the educational rational /business strategy into more detail and then, progressively, and iteratively, refining into schedules of detailed requirements, ensuring that the objectives for subcontracting will be met and the subcontractor will meet the requirements of this standard along with the requirements laid out in the funding rules.		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Pre-award activities			
1.4	There is a procurement strategy that would cover the pre-qualification, qualification, and tendering procedures. As part of the strategy, whether this is new or an existing process, the provider would need to decide what pre-qualification is required in respect of the criteria resulting in a Pre-Qualification Questionnaire (PQQ) being produced for those expressing an interest.		
1.5	That the PQQ is sufficient to collect, but not limited to, the following information: organisation, including ultimate parent details including identity, ownership and background, principal activities (past and present), organisational chart, contractor/sub-contracting approach, professional/commercial affiliations, legal, financial, capability, quality management systems, Ofsted reports and experience and track record.		
1.6	The procurement strategy/process ensures that a robust assessment process for selecting subcontractors has been established that would review the subcontractor's completed PQQ as well as their capability to control quality, delivery, quantity, price and all the other factors contained in the subcontract. Following a successful appraisal, the subcontractor is placed on an approved list of contractors.		
1.7	The procurement process includes the drafting of the ITT documents. Attention should be paid by the provider to ensure that the contract document sets out clearly, comprehensively, and unambiguously, the obligations of the parties to the agreement.		
1.8	The evaluation process includes not only the analysis of the potential subcontractor's response to the main subject matter of the requirements set out in the ITT, such as price, delivery, quality, methodology, for example but also, most importantly, the quality of the bidder's offer. There should be a clear rationale for how the tenders are evaluated and scored.		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Pre-award activities			
1.9	That following tender evaluation and, where appropriate, negotiation, the provider will satisfy themselves that an offer has been made which meets its requirements in all respects, including budgetary and capability, and consider that it is able to accept an offer and award the contract to the tenderer who meets the contract specification. It may then move directly to the award stage or make a recommendation to higher authority levels within the organisation for acceptance is aligned to the provider's strategic and operational objectives.		
1.10	That there is a contract management plan which determines how the contract will work once it has been awarded. It is vital that a contract management plan is drawn up in advance of contract award. This should set out how the obligations of all the parties should be carried out effectively and efficiently.		
1.11	That the proposed subcontract will meet the agreed educational needs, that it is achievable and affordable, and it addresses the desired outcome(s) of the subcontract, critical success factors, the possible alternatives, including existing contracts, the risks including the extent and where they may fall, identification of any contingent needs and ramifications of proceeding and timescales.		
1.12	Where appropriate you have sought approval from ESFA for any agreed subcontracting terms in relation to distance learning and whole programme subcontracting for 16 to 19 and there is evidence to support this.		
1.13	That management fees have been determined for the full range of funding retained and charges that they wish to apply, and these have been agreed at executive level and published on the website. These should only exceed 20% in exceptional circumstances, which, in all cases will ESFA reserve the right to challenge.		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Contract award and management			
2.1	That all awarded contracts are managed by staff within the organisation who have clearly defined role(s) that have been agreed as part of the overall considerations in producing the business case.		
2.2	The defined roles ensure that contract ownership is clear, with the budget holder, senior responsible owner (SRO), and contract manager clearly defined (where appropriate).		
2.3	There are well defined policies and processes and a clear contract management plan, with a focus on outputs and a 'whole life' approach to performance. For example, this must include, where appropriate, evidence of how the provider will: <ul style="list-style-type: none"> a. manage and oversee 16 to 19 distance and whole programme provision through the life of each learner's programme of study. b. define how whole programme subcontracting for AEB will be agreed and managed. c. ensure apprenticeship provision is not delivered solely by a subcontractor, as per the apprenticeship funding rules with specific regard to substance, leading the relationship, and the subcontracted delivery complementing the main provider's programme. 		
2.4	How these policies, including the rationale, are reviewed by the provider ahead of each Funding Year. Furthermore, the provider should demonstrate that the policies and rationale have been appropriately authorised through the organisation's governance structure. Once reviewed, updated policies must be published by 31 October in the relevant funding year.		
2.5	Where appropriate, overall ownership of contract management across the organisation is clear, with a 'contract management senior responsible owner' with responsibility for driving organisation-wide contract management performance.		
2.6	Contract management processes are aligned with, among others, wider organisational governance processes, operational boards, and risk structures.		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Contract award and management			
2.7	Contract management issues and performance are reported through the governance structure with senior level engagement.		
2.8	Regular assessment and evaluation must take place to ensure that the cost of contract management activities is justified and proportionate to the benefits obtained.		
2.9	Knowledge management is embedded, capturing key data and lessons from contract management process and experience both within the organisation and more widely.		
2.10	Professional contract management guidance is developed, or identified from external sources, and made available to contract managers.		
2.11	An appropriate assessment to ensure extremist organisations are not funded through the subcontracting Department of Education funding.		
People			
3.1	That either your business continuity / contingency plan incorporates the role of the contract manager(s) / those with contract management responsibility (ideally through involvement during the tendering/contract award processes) or you ensure continuity by ensuring there are appropriate handover / information sharing procedures in place.		
3.2	The contract manager(s) have a detailed knowledge of the contract and other relevant issues, such as service level agreements, requirements in line with ESFA contract and funding rules and current subcontractor performance.		
3.3	The contract manager(s) have the appropriate skills (both specific contract management skills and more general commercial awareness and expertise), with access to relevant training and development. Experienced contract managers are utilised on key contracts.		
3.4	Contract manager(s) have accurate job descriptions, roles are positioned at an appropriate level and salary, and there is a career path for contract management staff.		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
People			
3.5	Contract manager(s) have clear objectives and reporting lines, and their performance is managed through reviews and appraisals.		
3.6	The contract manager(s) have appropriate delegated authority to manage the contract effectively.		
Administration			
4.1	Signed contracts are stored and logged and are easily accessible when required; for complex contracts, a summary and/or contract operations guide should be produced.		
4.2	Key contractual information is recorded appropriately to allow, for example; search capability; documentation of up-to-date contract information; and key dates.		
4.3	There are mechanisms in place for identifying key contract 'trigger points', such as notice periods.		
4.4	There is schedule of regular as well as ad hoc reporting of contract management information and retention of appropriate documentation i.e., minutes of contract meetings, reviews of teaching and learning etc.		
4.5	There are appropriate processes and procedures in place to ensure that contracts are closed and/or terminated efficiently.		
4.6	The provider has considered the cost of contract management activities to the subcontractor, and the cost is proportionate to the contract size and risk.		
4.7	There is an appropriate process in place to quantify the information presented in the subcontracting declaration(s) made to ESFA. Where the information made in the declaration significantly changes an updated declaration should be made to ESFA as soon as possible.		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Managing relationships			
5.1	The minimum provisions within ESFA's Subcontracting rules form part of their subcontract agreement(s) and learning and/or delivery must not commence prior to a signed contract being in place between the two parties.		
5.2	Proactive conversations and/or independent checks are undertaken in relation the subcontractor at least on an annual basis which cover and document as a minimum, the subcontractor(s): <ul style="list-style-type: none"> a. Current ownership and person of significant control. Notification must be made to ESFA where this has changed from a previous year. b. Current/ latest financial health position. c. A review of learning activity delivered, including compliance with the relevant funding rules for each programme. d. The subcontractor(s) business continuity / contingency plan remains relevant or has been updated appropriately. 		
5.3	Their contract manager understands their own role and has clear visibility of the roles and responsibilities of staff on the subcontractor side.		
5.4	The respective responsibilities of the contract manager and the subcontractor are clear, and potentially defined in a 'joint statement of intent' or similar document.		
5.5	Continuity of key subcontractor staff is desirable (ideally through involvement during the sales process); where this cannot be achieved, there must be a handover from the staff responsible for the tendering process.		
5.6	Both regular structured and informal communication routes between the contract manager and subcontractor are open and used; customer and subcontractor staff are co-located where appropriate.		
5.7	Users are given clear expectations and an understanding of the contract and the services/ performance to be delivered (for example, through newsletters or briefings).		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Managing relationships			
5.8	Communications between the contract manager, subcontractor, and other stakeholders (users of the contract and others such as technical experts) are effective; and stakeholders are involved in contract management processes where appropriate.		
5.9	Problem resolution processes are well defined and used and are designed to ensure minor problems do not escalate and cause relationship issues; a 'blame culture' is avoided (for example, using a 'relationships charter' or similar document).		
Managing performance			
6.1	Service management is well structured; baselines are understood by both parties, and subcontractors understand the service they are required to deliver. The contract manager ensures that the lead provider furnishes the subcontractor with the information and contacts needed to deliver the service.		
6.2	A performance management framework is in place when the contract is signed. The framework is comprehensive, objective and provides incentives for the subcontractor to meet or exceed agreed performance standards.		
6.3	Service levels agreements are in place, and are linked to business needs, understood by the subcontractor, and monitored by the contract manager and/or end users.		
6.4	Subcontractor performance is assessed using clear, objective, and meaningful metrics, linked where appropriate to ESFA's funding rules and/or guidance.		
6.5	Clear processes are in place to handle operational problem resolution and resolve issues as quickly as possible.		
6.6	Where appropriate, user compliance with the contract is monitored and managed to ensure maximum operational effectiveness and value for money.		
6.7	Regular and routine feedback is given to Subcontractors on their performance.		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Managing performance			
6.8	There are clear contact points for service users both within the Subcontractor organisation and with the contract manager. Users understand what the contract is intended to deliver and are involved in the assessment of Subcontractor performance where relevant. Users understand escalation routes where issues arise.		
6.9	Changes in user requirements are captured and considered as part of formal change and contract management processes.		
6.10	There are formal performance reviews with Subcontractors, with documented improvement plans agreed where necessary, covering both operational issues and adherence to key contractual requirements, for example, on data security.		
Payments and incentives			
7.1	Payment mechanisms are documented and are clear and well understood by all parties (including incentives, penalties, and non-standard charges).		
7.2	Payment processes are well defined and efficient; appropriate checks and authorisation processes are in place for paying invoices.		
7.3	The costs of the services delivered, and contract management costs are mapped against budgets and allocated appropriately.		
7.4	Payment changes after the contract is let, for example from contract variations or benchmarking/ market testing, are made using contractual provisions and demonstrated to provide value for money.		
7.5	Payments are not made in advance of evidence to demonstrate learning activity has been undertaken.		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Risk management			
8.1	Contractual/subcontractor risk management is in place with clear responsibilities and processes, identification of who is best placed to manage risk, and subcontractor involvement where appropriate.		
8.2	Risks are formally identified and monitored regularly, with mitigating actions developed and implemented where possible, and 'obsolete' risks removed from consideration where appropriate.		
8.3	Escalation and reporting routes are in place for risk governance.		
8.4	Contingency plans are developed to handle subcontractor failure (temporary or long-term failure/default); exit strategies are developed and updated through the life of the contract.		
8.5	Contractual terms around termination are understood and monitored by the contract manager.		
8.6	Contractual terms around warranties, indemnities and insurance are understood and monitored by the contract manager.		
8.7	Contractual terms around security and confidentiality are understood and monitored by the contract manager, particularly issues relating to the security/confidentiality of personal data.		
8.8	Dispute resolution processes are in place, including agreed adjudication procedures, mediation, and arbitration.		
8.9	The contract manager monitors the subcontractor's financial health and business performance (including using credit rating agencies).		
8.10	The contract manager monitors the subcontractor's compliance with contractual 'non-performance' issues (for example, on tax and sustainability targets).		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Contract development and / or termination			
9.1	Undertake analysis of their subcontracted activity each year, to inform the progress made in their plans for a reduction across the 3-year period.		
9.2	Regularly review the subcontract (with a view to updating where necessary) to ensure it meets evolving business and educational needs.		
9.3	Ensure processes are in place that clearly lay out the governance of contractual change – who needs to approve what and how it will happen – with a focus on effective and prompt change implementation.		
9.4	Ensure there are clear processes for the management of minor changes and contract variations, with a focus on the cost/effort being proportionate to the importance and value of the change.		
9.5	Ensure there are more rigorous processes to handle major contractual changes, including clear approval mechanisms and accountabilities, and controls to demonstrate that changes offer value for money.		
9.6	Where appropriate, undertake value for money testing of existing services through benchmarking or other processes.		
9.7	Ensure there are processes to cover the introduction of new services under the contract, including market testing where necessary.		
9.8	Have dispute handling processes in place to address any change related issues.		
9.9	Have processes to account for various types of contractual changes. Both parties have a clear understanding of the arrangements for any extension of the contract (both scope and time) and related issues.		
9.10	Ensure processes are in place to handle commercial (financial) changes to the contract in a fair and structured manner.		
9.11	Manage price changes fairly and effectively with the use of mechanisms such as benchmarking, competitive tendering (for example, for major additional works), or other techniques such as open book pricing as appropriate, to demonstrate value for money.		

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

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Annex F - table for the provider to complete

	Standard	Provider's description of process(es) / control(s) (narrative)	Evidence to support
Contract development and / or termination			
9.12	Demonstrate their rationalisation of specifications and demand management are considered as options to achieve better value for money.		
Provider development			
10.1	Processes in place that clearly set out how provider development activities will be planned, managed, and governed.		
10.2	Clear processes for benefits measurement and capture are in place to ensure that provider development is focused on continuous improvement and achieving value for the lead provider.		
10.3	The lead provider understands what motivates and drives the subcontractor and how provider development fits with the provider's goals.		
10.4	Provider operational performance improvement activities (for example, 'Lean' and '6-sigma'), with potential input or assistance provided by the lead provider.		
10.5	Joint working or shared activities between the two parties for the benefit of both the provider and subcontractor (for example, process improvement, shared training, task forces or joint project teams).		
10.6	Provider improvement activities relating to wider government initiatives, with input or assistance provided by the lead provider (for example, on sustainability, disability employment issues, use of SMEs (Small and Medium Sized Enterprises) and BMEs (Black Minority Ethnic suppliers)).		
10.7	Shared risk reduction programmes or activities.		
10.8	Shared management activities (for example, provider boards) to drive performance improvement.		

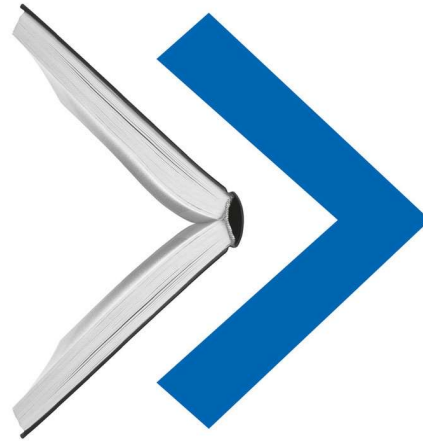
<https://www.gov.uk/government/publications/esfa-subcontracting-standard>

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EVERSHEDS
SUTHERLAND

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

Mark Taylor
Partner



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Managing Sub-Contracting in FE

The importance of getting it right

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The Importance of Getting it Right

- 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



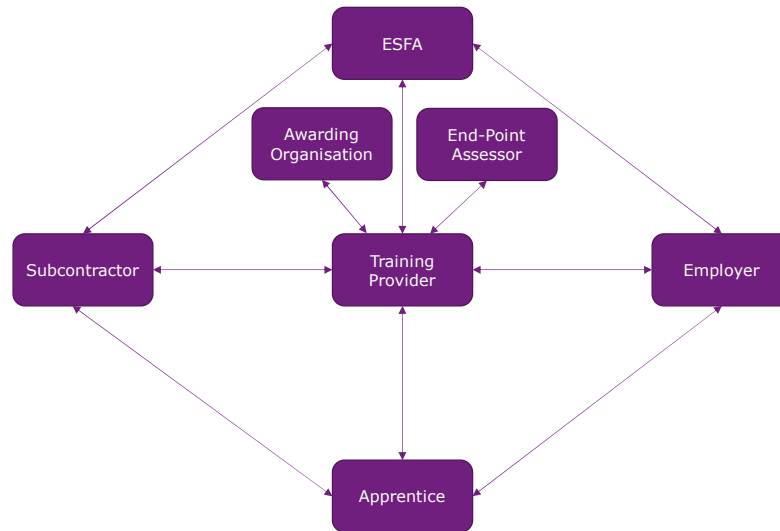
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Recent(ish) changes

- MORE funding rules (eg different rules for adult education budget and apprenticeship funding)
- Limitation on subcontracting
- Ban on brokerage
- Requirements to publish information
- New Standard

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Contracting Relationships



Eversheds Sutherland

| 09 November 2022 |

Apprenticeship Delivery Contracts with Employers

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Managing Sub-Contracting in FE

Choosing the right partner

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Choosing the right Partner

- Absolutely vital to effective contracting
- Type of Due Diligence
 - Legal
 - Financial
 - Commercial/operational
- Scope of Due Diligence
- Guidance for conducting due diligence checks on subcontractors

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Choosing the right Partner

- ESFA funding guidance
 - ensure the subcontractor has sufficient capacity, capability, quality and financial standing to deliver provision
- Cannot rely on ROATP
- Compliance with procurement law, including proof
- Prepare audit trail (now required)
- Individuals with an interest in the Subcontractor

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Managing Sub-Contracting in FE

The Terms of the Sub-Contract

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The Terms of the Sub-Contract

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



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The Terms of the Sub-Contract

- How bespoke a contract?
- Devolution.

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The Terms of the Sub-Contract

- Educational oversight – who is in charge?
- 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)

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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. Main Provider responsible for actions of the subcontractor.

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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
 - Prevent (also now required in the ESFA rules)

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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

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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

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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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| 09 November 2022 |

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

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EVERSHEDS
SUTHERLAND

Mark Taylor

Partner

t: 07717768430

@: marktaylor@eversheds-sutherland.com

eversheds-sutherland.com

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Data insights and key issues

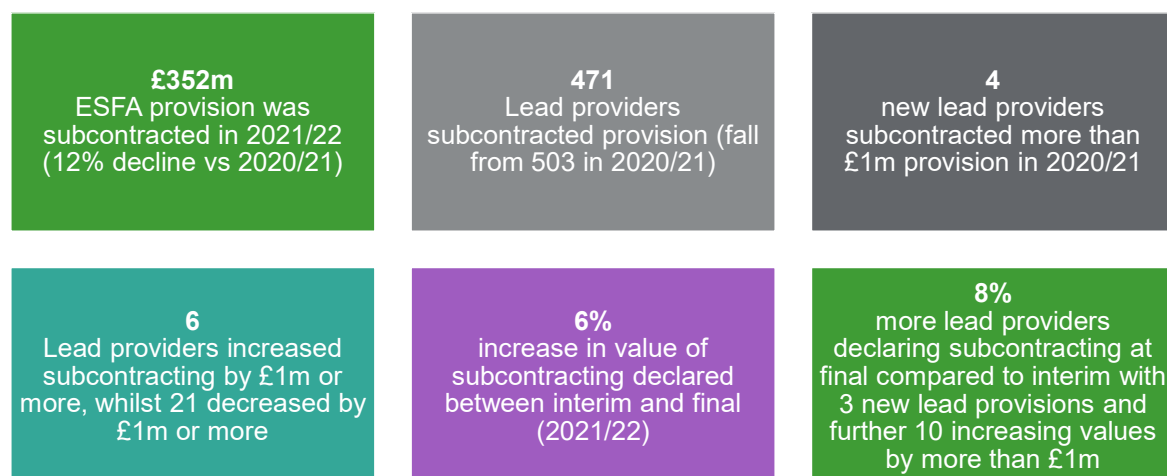


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RSM | 3 November 2022

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SUBCONTRACTING DATA INSIGHTS 2021/22 VS 2020/21



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SUBCONTRACTING - THE RISKS

Still considered the single highest area of risk by the ESFA

Track record of concerns directly linked to subcontracted provision

Sector still haunted by high profile cases of the 90s

More recent concerns with LMT and SCL

Reputational and financial impact

What does an increase in subcontracting actually mean?

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Common findings arising from the 2021/22 reviews of subcontracting controls

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COMMON FINDINGS ARISING FROM THE 2021/22 REVIEWS OF SUBCONTRACTING CONTROLS & ESFA FUNDING ASSURANCE

Contract terms and signatures

Subcontracting standard

- Risk management
- Administration

1

Subcontracting policy content and approval

Subcontracting standard

- Pre-award activities

2

Documenting the roles and responsibilities of the parties

Subcontracting standard

- Managing relationships

3

Quality of monitoring documentation and content of monitoring visits

Subcontracting standard

- Managing performance

4

Employer agreements

Subcontracting standard

- Managing performance

5

Payment terms

Subcontracting standard

- Payments and incentives

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The Subcontracting Standard

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SUBCONTRACTING STANDARD FROM 1 AUGUST 2022



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Assessing the standard

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SELF ASSESSMENT

The standard is not a re-run of the previous controls review – the controls review was very process driven, the review of the self assessment process will be more judgmental.

The self-assessment has to be completed to provide:

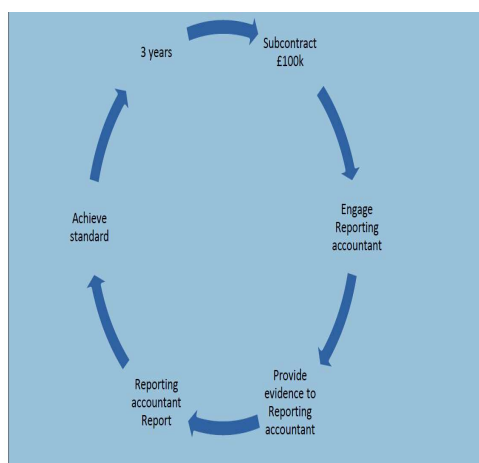
- **Description of controls and processes**
- **Evidence to support**

For those familiar with the RSM approach for the last few years this will be familiar but is in far more detail – expect the process to take longer to prepare for, with more evidence and more time to complete the review

Complete the self assessment now – identify weaknesses and plug gaps – only at this point should you consider having the review completed

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STANDARD REVIEW CYCLE



Unlike the previous controls certification process, the standard allows Providers to be approved for three years if compliance with all areas is demonstrated

However, if there are changes in the three years this may require a reassessment

- Material increase in the volume of subcontracting at a funding stream level
- Material change in operational staff managing subcontracting
- Changes in senior leadership who have responsibility for the oversight of subcontracted provision
- Any other significant concerns that have been brought to the attention of the ESFA in relation to your subcontracted provision

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ASSESSING THE STANDARD

Outcomes

27. There are ten sections (components) of the subcontracting standard where we require the reporting accountant to apply a RAG* (*red, amber, green) rating to each subsection, based on the work undertaken.

28. We **do not** require the reporting accountant to give each section an overall RAG rating, nor do we need an overall report rating. The ESFA will use the rating of each subsection as part of their overall determination as to whether the provider has achieved the standard.

- **Green** = No exceptions noted / sufficient evidence provided to demonstrate compliance with the subsection
- **Amber** = a small number of exceptions / limited evidence provided to demonstrate compliance with the standard
- **Red** = Multiple or significant exceptions noted / no evidence provided to demonstrate compliance with the standard

The final decision is with the ESFA, not the organisation completing the review

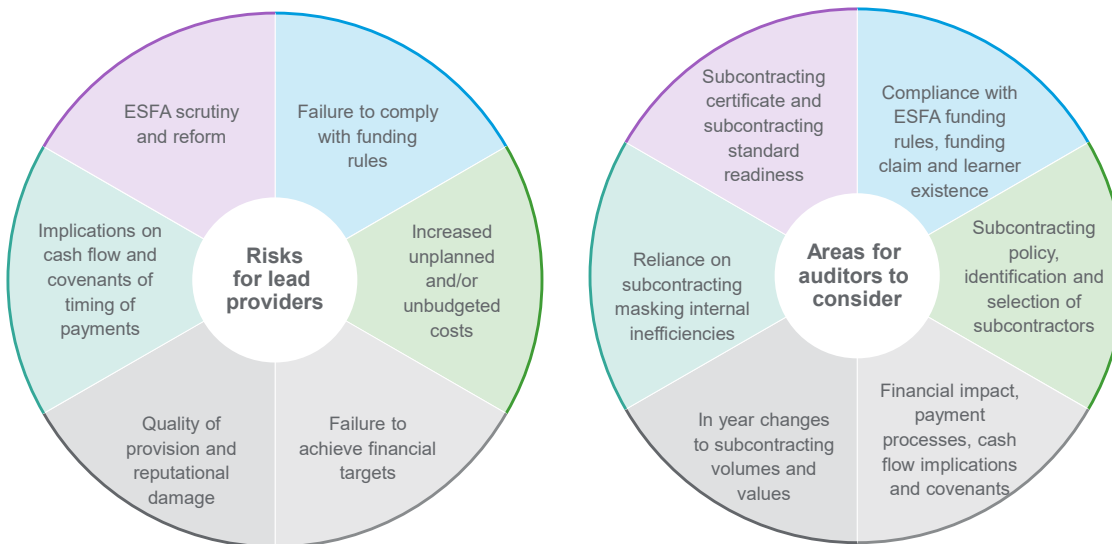
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THINGS TO CONSIDER

Why does the Prime subcontract?	Subcontractors clearly understand what is expected of them and there are KPIs linked to the funding rules where appropriate
How does the Prime select subcontractors?	Do you have formal performance reviews with subcontractors and are these documented
Do you have a contract manager with defined roles?	Do you have clear authorisation and payment processes for paying invoices from subcontractors and are these inline with timescales on the contract?
Does the contract manager have clear objectives and delegate authority to manage the contract?	Do you have risk management procedures and risk register?
Are all contracts logged, signed and stored securely?	Do you review subcontracting arrangements and do you plan to reduce over a 3 year period?
What management information is regularly available to support management decisions and inform senior leaders/board/governors?	Do you understand your subcontractor and how do they fit with your goals?

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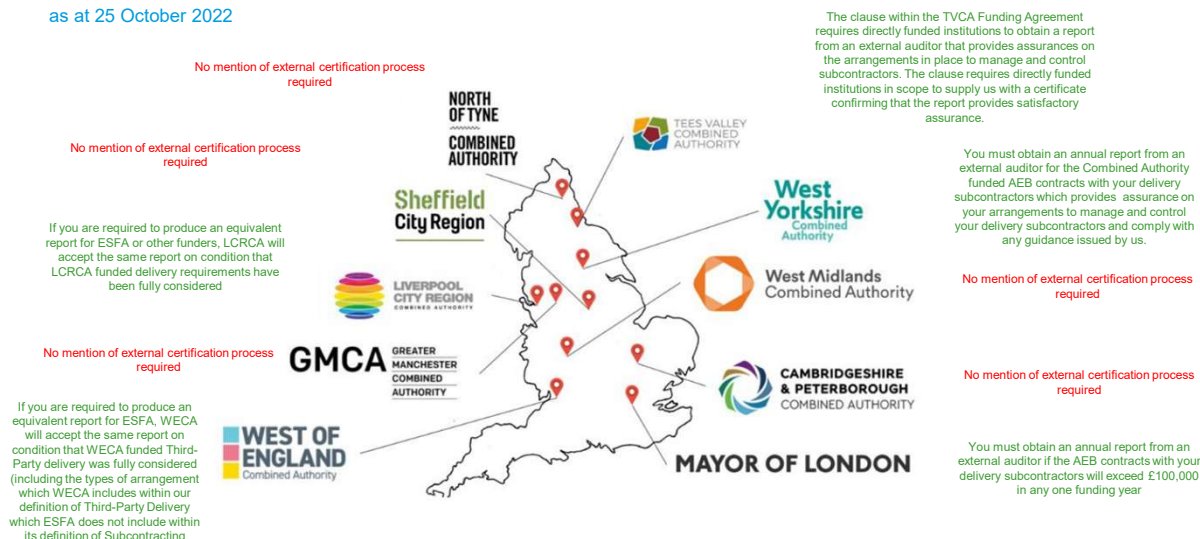
SUBCONTRACTING RISKS AND AREAS TO CONSIDER



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COMBINED AUTHORITY EXTERNAL ASSURANCE REQUIREMENTS

as at 25 October 2022



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Q&A



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Thank you

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Subcontracting funding summit

Ofsted approach to inspection

Paul Joyce
His Majesty's Inspector
Deputy Director – further education and skills



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Topics for today

- The provider landscape.
- Our inspection approach.
- Subcontractors.
- Typical activity.
- What we see on inspection.
- Questions.



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The provider landscape

- Continually changing and often complex.
- Added complexity given role of mayoral and combined authorities.
- Contracting/ subcontracting rule changes.
- New areas of activity.
- Pilot schemes.
- Funding and accountability review.
- Roles and responsibilities.

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Our inspection approach

- We will normally inspect providers that have:
 - a direct funding contract 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.

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Inspecting subcontracted provision



- We will normally inspect any funded provision that the directly funded provider chooses to subcontract to a third party as part of the directly funded provider's own inspection.
- When looking at subcontracted provision during the inspection of a directly funded provider, we will only consider the provision for which the directly funded provider is responsible for.
- Any subcontractor that holds contracts with different directly funded providers, or operates their own directly funded provision, will be subject to a separate inspection event for each different contract/subcontract they hold.

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Typical inspection activity in subcontracted provision.



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What happens during inspection:

Inspection is based on the EIF and FE&S handbook:

- Sampling approach used to consider the effectiveness and quality of subcontracted provision.
- Activity will be curriculum focused:
 - Intent
 - Implementation
 - Impact
- Activity will explore management of subcontracted provision.

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What inspectors may ask the provider about subcontracted provision:

- Why subcontract, what is the rationale?
- How good is the quality of provision?
- What is the standard of students' work?
- Are current students making good progress?
- How do you monitor and evaluate the quality of provision and student outcomes?
- How do ensure students in subcontracted provision are safeguarded?
- How effective is the management of the subcontractor?

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What we see on inspection.



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In the better providers....

Provider and subcontractor staff give compelling answers that are well supported by comprehensive evidence to the following questions:

- 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 for quality as well as compliance?

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But too often....

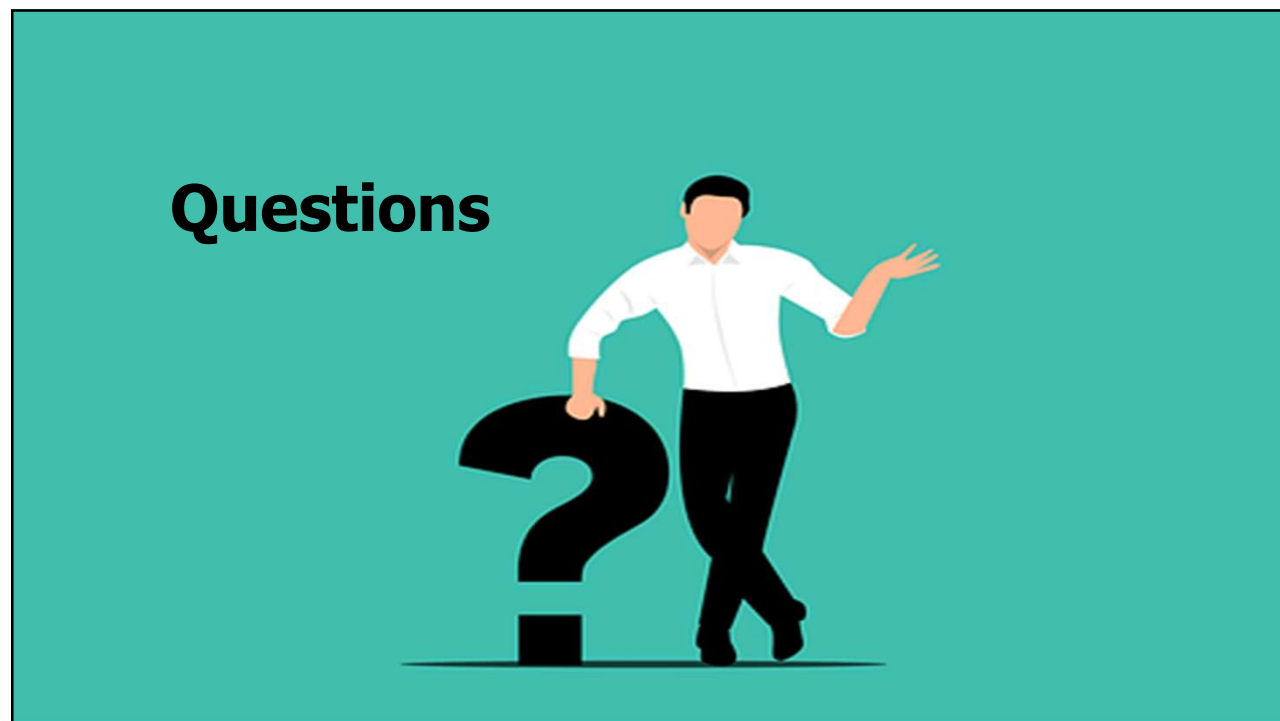


In poor providers inspectors see:

- Poor management of subcontractors.
- Ineffective quality assurance arrangements.
- Poorly planned and/ or sequenced curriculum.
- Little or no oversight of provision.
- Insufficient attention to safeguarding.
- Poor quality teaching and/or assessment.
- Students making slow progress.
- Low achievement rates.
- Low attendance rates.

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Ofsted on the web and on social media



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<https://reports.ofsted.gov.uk>

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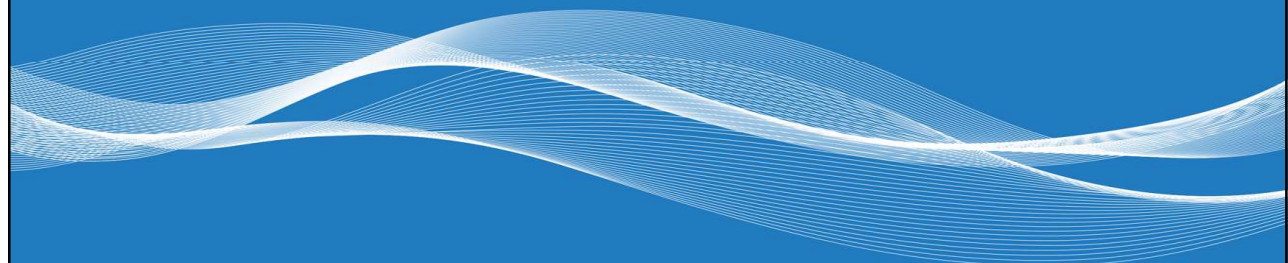
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The future of subcontracting, beyond 2022/23

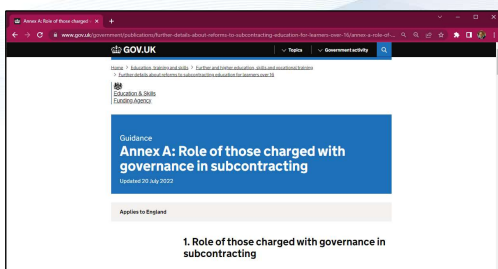


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LEARNING & SKILLS
EVENTS, CONSULTANCY & TRAINING

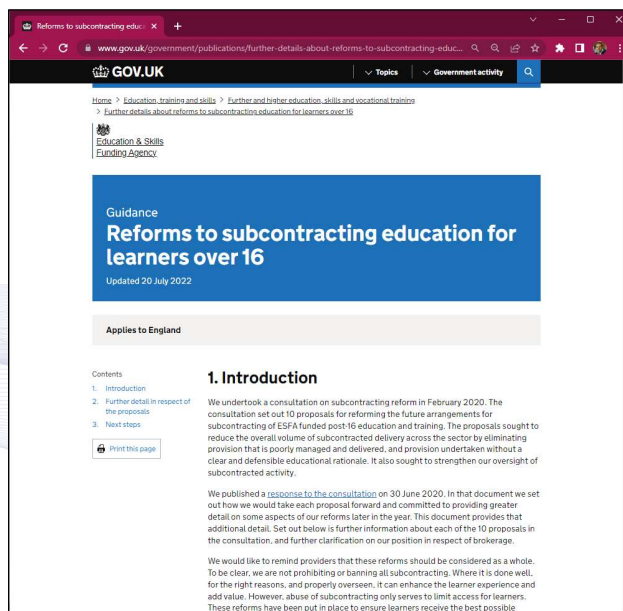
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Consultation and reforms

“Over the next 3 years we will be implementing a series of reforms that will strengthen ESFA’s oversight of subcontracting in the sector. We recognise that we cannot achieve our aims without the sector itself working towards the same outcomes.”



<https://www.gov.uk/government/publications/further-details-about-reforms-to-subcontracting-education-for-learners-over-16/annex-a-role-of-those-charged-with-governance-in-subcontracting>



<https://www.gov.uk/government/publications/further-details-about-reforms-to-subcontracting-education-for-learners-over-16/reforms-to-subcontracting-education-for-learners-over-16>

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Timeline during this “transition from report to standard”

Summary of changes and transition from report to standard

Year	Current requirement – External audit report	Externally assured standard
2019 to 2020	ESFA require a copy of the report by 30/09/2020 if: 1) subcontract £100k or more of apprenticeship funding, 2) and/or 3) subcontracts £100k or more of AEB/ESF funding. ESFA reserve the right to request copies of the report and associated action plan.	In development, utilising intelligence from the external audit report contents and working with internal/external stakeholders.
2020 to 2021	Requirement for AEB, ESF and apprenticeship provision to send certificate, report, and associated action plan to ESFA by 31 July 2021. Guidance and funding rules updated to reflect that it will now be £100k or more across all 3 funding streams. Updated certificate to ensure the ESFA has access to the correct information.	It is our intent to develop and publish the draft standard by 31 July 2021.
2021 to 2022	We will include this requirement in the 16 to 19 funding rules and the requirement will then become if you subcontract out £100k or more of apprenticeship, AEB, ESF or 16-19 funding (rather than looking at individual funding stream level) you must get an external audit report and certificate. These must be sent to ESFA by 31 July 2022.	The standard will be introduced, and we expect providers to start working toward this. It will not be subject to any external validation in this transitional year.
2022 to 2023	This requirement will be replaced by the externally assessed standard.	First year of being externally validated prior to ESFA accreditation of standard.

<https://www.gov.uk/government/publications/further-details-about-reforms-to-subcontracting-education-for-learners-over-16>

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Additional guidance and forms

“This page is for providers engaged in subcontracting relationships or a provider looking to enter into new subcontracting arrangements. The guidance provides further detail about the 3 year reform programme to post-16 ESFA funded subcontracted provision.”

“It includes specific guidance for those charged with governance and templates to make requests to ESFA by Monday 31 March 2022 and each year thereafter.”

HTML

[Reforms to subcontracting education for learners over 16](#)
HTML

HTML

[Annex A: Role of those charged with governance in subcontracting](#)
HTML

[Annex B: Distance subcontracting requests form](#)
ODT, 38.8 KB
This file is in an [OpenDocument](#) format

[Annex C: Making a case to maintain current subcontracting](#)
ODT, 39.3 KB
This file is in an [OpenDocument](#) format

[Annex D: Whole programme subcontracting requests form](#)
ODT, 38.5 KB
This file is in an [OpenDocument](#) format

<https://www.gov.uk/government/publications/further-details-about-reforms-to-subcontracting-education-for-learners-over-16>

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Use of Ofsted

2.5 Proposal 5: Volume controls on the value of ESFA funds that can be held by a subcontractor

We said: we will monitor the volume/value of aggregate provision held by a single subcontractor and where that is above £3 million we will refer to Ofsted for inspection. We will reserve the right to take steps to reduce the value/volume where we consider the level of exposure to be too high.

Next steps

We expect subcontracting in the system to reduce overall but where there remain high value/volume subcontractors without a lead contract we will:

- review this at key points in the funding year, which may result in:
- a referral to Ofsted for a direct inspection
- direct action, such as requiring leads to reduce volumes with them

In taking action we will consider the oversight of the leads and the quality of subcontracted learner outcomes.

<https://www.gov.uk/government/publications/further-details-about-reforms-to-subcontracting-education-for-learners-over-16>

Ofsted

raising standards
improving lives

Subcontracting in further education and skills

This study investigates subcontracting in further education and skills and relevant aspects of Ofsted inspection practice.

Next steps

As a result of our findings, we are seeking to make our approach to oversight more comprehensive and transparent through the following:

- working with ESFA to improve our access to subcontracting data
- improving internal communications on the existing resource available on inspection, to investigate more subcontractors more thoroughly
- changing our systems to record systematically and consistently which subcontractors we visited in any depth on inspection
- naming more subcontractors within our evidence bases
- where appropriate, highlighting and naming more subcontractors within our reports.

<https://www.gov.uk/government/publications/subcontracting-in-further-education-and-skills>

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£352m subcontracted (self-declared)

If this is correct - it's fallen about 2/3rds since 5 years ago

471 main providers

732 subcontractors

Main provider has 6 subcontractors on average £737k worth of subcontracting on average

Subcontractor has £481k worth of contracts on average
Subcontractor working with 3 main providers on average

Top 3 main providers by value

Prime Provider Name	Subcontractors	Value of contracts
BRITISH ARMY	10	£34,999,723
SERCO LIMITED	45	£20,049,812
THE GROWTH COMPANY LIMITED	87	£13,544,862

Top 3 subcontractors by value

Subcontractor	Number of prime providers	Value of contracts
LEARNING CURVE GROUP LIMITED	49	£11,562,052
THE COLLEGES' PARTNERSHIP LIMITED	2	£11,157,510
TQ EDUCATION AND TRAINING LIMITED	4	£11,048,352

Transparency data
List of declared subcontractors

Subcontractors that hold contracts to provide post-16 education and training

From: [Education and Skills Funding Agency](#)
Published: 20 February 2014
Last updated: 12 October 2022 — [See all updates](#)

[Get emails about this page](#)

Applies to England

Related content

- [Post-16 education subcontracting using funding to offer education and training](#)
- [Further details about reforms to subcontracting education for learners aged 16](#)
- [Apprenticeship funding rules](#)
- [Agreement between an employer and the Department for Education \(DfE\)](#)
- [ESFA subcontracting standard](#)

Documents

[List of declared subcontractors](#)
005_200 KB
This file is in an [OpenDocument](#) format

Details

Information about subcontractors that hold contracts worth at least £100,000 in aggregate with one or more ESFA-funded post-16 education and training programmes, including AEB, traineeships, Apprenticeships, ESF and 16 to 19 Programmes.

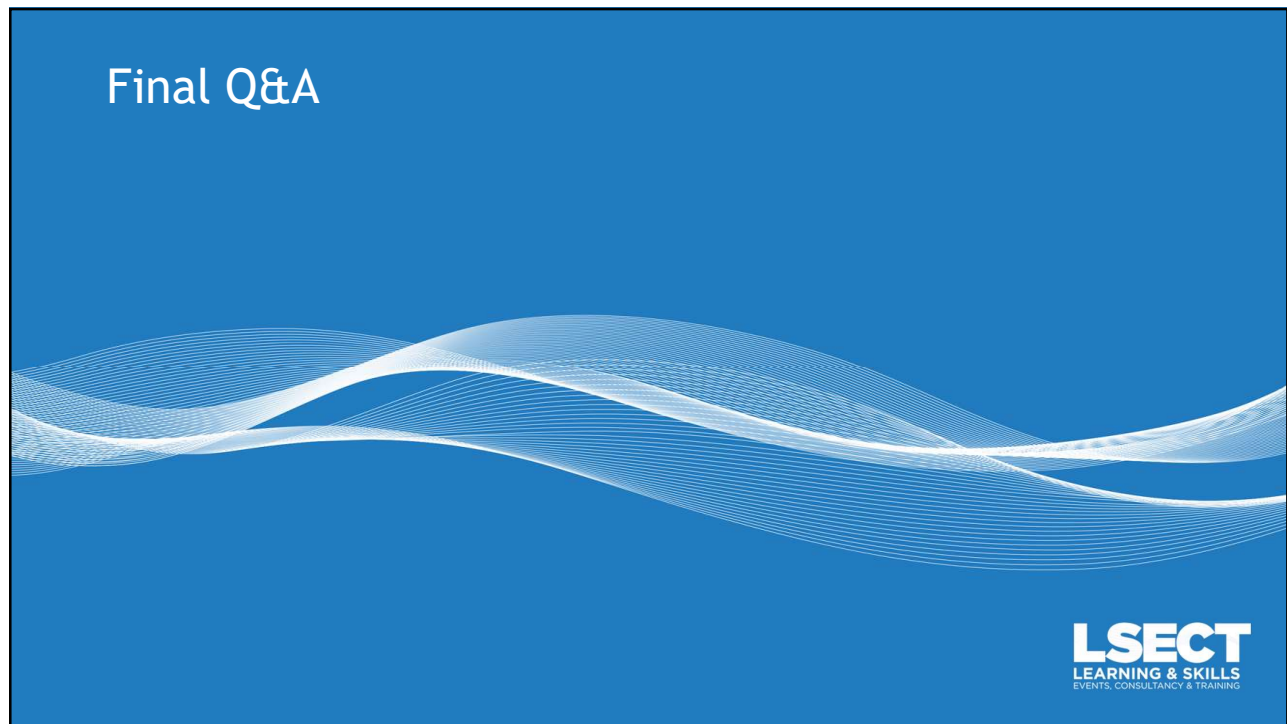
<https://www.gov.uk/government/publications/sfa-subcontractors-list>

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Future of subcontracting

- Staying complex...with apprenticeships, ESFA non-apprenticeships and AEB/NSF devolved areas different. And what of bootcamps, or a future full of Higher Technical Qualifications?
- Will it continue to shrink overall as limitations continue and cost/weight of bureaucracy bites?
- Continue to review why you subcontract and consider not just if strategic, but if the rewards outweigh the risks
- The new Secretary of State for Education and Skills Minister have both been FE ministers during subcontracting scandals. I don't think either are subcontracting fans...

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