



ASSOCIATION
OF COLLEGES

360 Guidance Subcontracting in Apprenticeships

A guide covering:

ESFA Rules and Audit

Ofsted

QAA

HMRC

With input from:

ESFA, Ofsted, IfA, QAA, AoC, AELP and

UVAC

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360 Guidance on Subcontracting in Apprenticeships.

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SECTION 1 – Introductions

1.1 AoC

Subcontracting within FE has always been followed with interest. It is not the best understood area of the apprenticeship market and perhaps in a way, this is why it is treated with a level of suspicion. AoC have been happy to lead on this collaborative project in an attempt to shed some light, and much needed transparency, on subcontracting within apprenticeships. We are keen to ensure that training providers of all types are free to develop new and innovative ways of meeting demand from both employers and apprentices, and subcontracting provides a tool towards such developments. This clear guide is designed to help all training providers to better understand how subcontracting works and how to use it to best effect in the delivery of apprenticeships.

We have been particularly pleased to be able to pull together such a strong team of stakeholders to contribute to the guidance, so that training providers can gain a truly 360 degree understanding of effective practice in subcontracting. I believe it also demonstrates how the sector can work most effectively through collaboration and co-creation, both amongst training providers, and working with officials. We are far more effective working together to solve the sector's issues than we are when pitched against each other.

I hope you will find this guide useful and share it with other colleagues involved in apprenticeship subcontracting.

David Hughes
Chief Executive
Association of Colleges

1.2 ESFA

ESFA have been happy to contribute to this guidance, as it has been specifically designed to help training providers of all types to use subcontracting to add value to the offer they put before employers and apprentices. It pays due regard to our funding rules and audit requirements, brings in the perspective of other agencies and organisations, and provides a clear consideration of effective practice whilst explaining the intent of the rules.

It should of course be read in conjunction with our rules and performance management publications that are in place at the time of delivery.

1.3 QAA

The UK higher education sector has long embraced the use of partnerships in the design and delivery of courses including delivery through partners within the UK and overseas, the recognition of others' courses for credit towards higher education awards, and co-delivery of courses with education providers, employers and others. Within UK higher education these arrangements are usually referred to as partnerships, or collaborative provision; within apprenticeship education the term 'sub-contractor' is widely used. The QAA recognises that partnerships / sub-contracting can broaden the higher education that can be offered through one provider and that successful partnerships can be developed with a range of organisations. Key to the success of such relations are the measures that are put in place to quality assure the partnership and the learning experience for apprenticeships. The QAA advocates a risk-based approach to the partnership and supports the advice and guidance presented in this guide. Further guidance, specific to UK higher education is available from the UK Quality Code for Higher Education and complementary QAA publications.

1.4 An introduction to the 360 Guidance on Subcontracting

1.4.1 Context

Subcontracting has been used in Further and Higher Education for many years, whilst it might not always have been called subcontracting. We have had franchised delivery, collaborative partnerships, niche delivery partners and a myriad of other arrangements for delivering training opportunities, that rely on a combination of two or more providers' expertise (which may include the employer as a provider) or facilities to deliver a high-quality programme of learning. In the case of prescribed higher education programmes including Degree Apprenticeships, providers without degree awarding powers planning to deliver such provision, need to work in partnership with an institution willing and able to offer a validation service. For the most part, such arrangements are the result of a general recognition that we are not best at everything and our delivery, and that of our partners, can be enhanced through partnership.

In the past there have been policy decisions that have fuelled additional subcontracting in apprenticeships: the raising of the minimum contract value threshold, the introduction of penalties for underspending against funding

allocations, the inability for new entrants to access funding directly from government, the introduction of degree apprenticeships and more recently, the pro-rata approach in the last non-levy procurement, being the main examples. For whatever reason providers have chosen to work with subcontractors, there is a wealth of good practice within subcontracted delivery that has been well-managed and well-received. This guide aims to reflect on examples of good practice and how subcontracting can be used to best effect with apprenticeships.

We are still in a period of significant reform in apprenticeships in England, and subcontracting models are bound to emerge to meet the needs of the market shifts created by these reforms. New organisations have entered the market to deliver apprenticeships, including an increased number of universities and employer-providers, so we are keen to ensure that in the diversity of arrangements, subcontracting that is undertaken within apprenticeships is strong and effective and presents a range of benefits and opportunities to both employers, apprentices and all providers.

As with anything that is new, it can be hard to find clear advice that you can be confident in, to know that this is not just an individual's take on the rules, but a reliable and fully informed source. This Guide is intended to provide you with just that confidence by articulating the arrangements governing subcontracting by all types of apprenticeship provider. It is produced with the agencies and stakeholders who have been involved in the development and the management of subcontracting rules and those who are determining what high-quality provision looks like. The guidance captures their views and insights, and provides case studies and scenarios to help explain how others have implemented the policy successfully in practice.

We hope that you find this free Guide of use and we would welcome any [feedback](mailto:teresa.frith@aoc.co.uk) (teresa.frith@aoc.co.uk) that you have.

1.4.2 Key Stakeholders

Within this Guide we will refer to the following key stakeholders:

Degree Awarding Body

A Degree Awarding body (DAB) is a UK higher education provider with the power

to award degrees.

Delivery subcontractor An organisation contracted by the main provider to deliver specific aspects of provision to an employer or group of employers. A formal contract will describe the precise nature of the relationship, including the delivery required of the delivery subcontractor and what the delivery subcontractor can expect from the Main provider. See Section 7.

Education and Skills Funding Agency (ESFA) Produce the funding rules and take responsibility for ensuring compliance with those rules, including those that cover subcontracting within apprenticeships. See Section 2. The ESFA also manage the Register of Apprenticeship Training Providers (RoATP) and the Register of End Point Assessment Organisations (RoEPAO) and regulate the activity of all organisations involved in apprenticeship delivery and assessment.

Institute for Apprenticeships is responsible for the development of high quality apprenticeships so they are viewed and respected as highly as other education routes. The institute also covers a series of supportive and advisory functions, all with a focus on ensuring that apprentices have the skills, knowledge and behaviours needed to make a significant contribution to their job role, sector and employer.

Main provider The provider who holds the contract with the employer and manages other providers within the delivery of that employers' apprenticeship programme. The main provider remains accountable for the quality of all aspects of delivery and the actions of their subcontractors, this includes the quality of the provision, the management of the relationship with the employer and ensuring contractual compliance across all partners in delivery. This is covered in more depth in Section 7.

Within higher education, a higher education provider, where it is a Degree Awarding Body, has ultimate responsibility for the quality assurance of all aspects of a higher education award, this will cover all learning, training, teaching and work-based learning where it contributes to the award of credit and is, therefore, an integral part of the award. See Section 7.

Office for Students (OfS) The main regulatory body for providers of higher education in England, work with the QAA (below) to undertake quality and standards assessment functions. It regulates the quality of apprenticeships at levels 4 and 5 that include a higher education qualification and at levels 6 and 7 (excluding teacher training), including all subcontracting.

Ofsted Responsible for making professional judgements about the quality

of provision, including the suitability of the management arrangements in place to support the quality of delivery within delivery subcontractors managed by the Main provider. Duties and responsibilities will vary depending on the level of study and whether or not the apprenticeship includes a higher education qualification (See Section 4).

Professional, Statutory and Regulatory Bodies (PSRBs) (where applicable) May/will be responsible for approving/accrediting a provider’s new apprenticeship programme and approving major changes to existing programmes before an apprentice can start their training. In these cases, any regulatory approval of the provider and its programme(s) (including delivery arrangements such as subcontracting) will be separate from, and in addition to, the Institute for Apprenticeships processes and any ESFA funding requirements

UK Quality Assurance Agency for Higher Education (QAA) An independent, not for profit organisation that safeguards standards and improves the quality of UK higher education wherever it is delivered in the world; it checks that apprentices, as with other students, get the higher education they are entitled to expect.

UK Quality Code for Higher Education (the Quality Code) Articulates the fundamental principles that should apply to higher education quality. It is the key reference point to ensure that UK higher education providers are achieving the outcomes expected of them and that they offer apprentices a high-quality experience. The Quality Code includes expectations, core and common practices for all aspects of an apprentice’s higher education learning journey including where that learning is delivered by others, including subcontractors. The QAA also publishes advice and guidance on approaches to quality assuring higher education in apprenticeships.

<http://www.qaa.ac.uk/quality-code/the-existing-uk-quality-code/part-a-setting-and-maintaining-academic-standards>

1.4.3 Current Data on Subcontracting

| Subcontracting by Apprenticeship and Provider Type | | | | | | | | | |
|--|-------------------|---------------|------------|-----|---------------------------------|---------------|-------------|-----|--|
| Data source: National ILR 16/17 data R14 | | | | | | | | | |
| Apprenticeship Learning Aims | BY VOLUME | | | | Total Payment Expected for Year | | | | |
| | Not subcontracted | subcontracted | Total Aims | % | Not subcontracted | subcontracted | Total Aims | % | |
| Colleges (all types) | 477,770 | 345,980 | 823,750 | 42% | 367,405,043 | 159,447,946 | 526,852,989 | 30% | |
| Private Training Providers | 1,142,710 | 286,680 | 1,429,390 | 20% | 600,175,155 | 176,950,598 | 777,125,753 | 23% | |

This data is sourced from National ILR 16/17 data R14, analysed for AoC by RCU.

When looking at subcontracting across the current delivery base, it is easy to see that, due to the volume of subcontracted provision, all types of provider can see advantages in subcontracting. Whilst non-college-based providers subcontract a smaller amount of their provision, the actual amount of funding involved annually is a quarter of million pounds more than is subcontracted across colleges. With the introduction of Universities and the growth in Employer-Providers within the provider base in apprenticeships, the need for subcontracting to support partnership delivery is likely to increase over the next few years.

It also becomes clear that subcontracting within apprenticeship is an integral part of the provision base, and further significant alterations to subcontracting arrangements could impact negatively on apprenticeship starts.

It is anticipated that the amount of subcontracting across the sector will change and possibly reduce in response to the funding and other reforms put in place in 2017/18.

Quite a number of 2016/17 subcontractors are now on the Register of Apprenticeship Training Providers (RoATP) and are in receipt of a direct funding allocation, so will no longer be seeking a subcontract arrangement. Employers who are taking a greater level of interest in their apprenticeship delivery, may well seek a subcontracted partnership so that they can contribute to their apprentice's off the job learning. New partnerships in delivery are likely to emerge to meet increasingly complex and diverse demands from employers that cut across traditional FE / HE divides. There are also subcontractors who will wish to remain as such moving forward, mostly to take advantage of the expertise that sits within their Main provider, thus allowing them to concentrate on delivery. New subcontracting rules place a greater responsibility on main providers than before, and the relationships that can be forged through subcontracting partnerships allow providers to concentrate on developing their specialisms and capacity whether that be in training delivery or managing the quality of delivery and the relationship with the employer. As in any other industry, the apprenticeship delivery market serves its customers far more effectively through working together and playing to organisational strengths.

1.4.4 What is and what is not subcontracting?

As was stated earlier, a variety of terms have been used for subcontracting: partnership, collaborative working, franchising for example. Mainly though there are two types of subcontracting seen within the FE sector; **Provision subcontracting** and **services subcontracting**.

Provision subcontracting used to be defined as where a main provider gives over a portion of their funding to another provider and that other provider undertakes all provision using that 'allocation'. This would include finding learners, holding the relationship with the employer and delivering the training independently from the funding provider, other than that main provider retained responsibility for the overall quality of delivery. **This type of arrangement is no longer possible within the funding rules**, as the Main provider must directly manage all aspects of the relationship with the employer. There have been examples of poor provision subcontracting in the past, where the main provider has not undertaken effective due diligence and/or has not taken effective steps to oversee the quality of the provision. The opportunity for this type of poor practice has been managed out of the market through significant shifts in the funding rules.

Provision subcontracting in the new apprenticeship landscape, now refers to the delivery of a complete apprenticeship framework or standard that is delivered by a subcontractor.

The current rules require the main provider to directly deliver an amount of the apprenticeship training or on-programme assessment within every employer's apprenticeship programme that is 'of substance'. A subcontractor may well deliver a full apprenticeship standard to an employer, but only where that standard is part of a broader programme with that employer, not the complete offer.

Provision subcontracting is referred to within the 'Addendum to the apprenticeship funding and performance management rules, May 2017 to March 2018' (please note this document no longer applies to apprenticeship Provision started outside May 2017 and March 2018). Here it is defined (SC13) as 'the delivery of full apprenticeship frameworks or standards'. Within the Addendum, the definition is only used when considering a main provider's fees and charges policy for subcontracting. The Addendum required that the main provider's fees and charges policy applied only to 'provision subcontracting' and

no other type of subcontracting (although the main provider could include all subcontracting within the policy should they choose to). There is no longer a requirement for main providers to publish their fees and charges policy as this Addendum is no longer in force, and the ESFA funding rules have changed. Best practice would suggest that the publication of a main provider's fees and charges policy is still to be recommended.

Services subcontracting is where a main provider purchases a specialist service from a subcontractor. This might be the delivery of a specific 'niche' element within an apprenticeship standard for example. Any **collaboration or partnership within delivery of the 20% off the job minimum should be considered subcontracting**. All subcontracting arrangements are subject to ESFA rules regarding subcontracted activity; these will apply even where the employer is the delivery partner.

Within the current rules it is possible for a main provider to deliver no off the job training, but remain within the rules. Where this is the case, the main provider should expect to be challenged by both ESFA, Ofsted (or HE equivalent) to demonstrate their control over:

- the relationship with the employer,
- the quality of the delivery,
- the management of progression in learning, and
- the level and range of support they provide to the subcontractors.

In short, the main provider will need to demonstrate the value that they add through the partnership. More on this in Section 2.3.1 and Section 7.

The only activity that is fundable when provided by a third party, but NOT subject to ESFA subcontracting rules, is when the third party is supplying administration and other peripheral support to the provider undertaking all delivery and on-programme assessment as well as directly managing the relationship with the employer. The provision of administration is an 'eligible cost' for funding purposes, but is NOT included within the ESFA definition of 'delivering apprenticeship training and/or on-programme assessment' (taken from P159 in 2018/19 apprenticeship funding rules, version 1). Administration then, whilst an eligible and fundable cost, is not part of the 20% off the job and

so does not fall within the subcontracting rules. This is described in more detail in section 2.1 Below is a scenario to help explain this assumption:

A provider and an employer agree to work together. The employer is on RoATP as an employer-provider and has aspirations to become a direct deliverer of their whole apprenticeship programme, but they do not have capacity or confidence to undertake this transition alone. They strike a deal with the provider: for year one the provider will be the Main provider and subcontract to the employer. During that first year, the provider will support the employer to upskill staff for direct delivery and to develop the capacity to manage the relationship with ESFA/Ofsted. After the first year, the employer decides that whilst they do want to undertake their own delivery and are confident in their ability to manage the quality of provision, they cannot cost effectively duplicate the providers expertise in managing ESFA expectations, so they agree to work with the provider who will continue to supply these essential (and fundable) functions to the employer. As these functions fall outside the definition of 'delivering apprenticeship training and/or on-programme assessment' this arrangement does not fall within the current ESFA subcontracting funding rules, but the activities can legitimately be funded using ESFA levy funding.

1.4.5 The case for the continuation of subcontracting within apprenticeships from the perspective of main provider and subcontractor

Subcontracting has become an integral element of the apprenticeship system across FE and HE. It has grown and evolved over time in response to changes in demand, policy and funding systems. Likewise, the funding system has adapted to changes in subcontracting practice in apprenticeships. The current apprenticeship reforms are likely to result in a further evolution of subcontracting practice.

Subcontracting plays a vital part in the further and higher education systems for a number of reasons:

Employer Choice: A desire for large employers to work with one main provider and that provider needing to subcontract to ensure coverage by level (with apprenticeships now covering L2 to L7), sector, specialism and region.

Provider Scope: Not all providers can deliver the totality of the needs of an

individual employer and subcontracting can provide a complete solution to employer need and demand

Specialism: Many specialist providers offer unique training and want to focus on the training and delivery aspect of the apprenticeship programme, where they have most expertise, leaving the contract administration and back-office functions to larger, well experienced main providers.

Growing Quality Providers: A desire for new providers to be supported in capacity building by an established provider, who can provide guidance and share best practice in the setup of their own infrastructure and business growth. It is likely within the current reforms that we will see a rise in the number of employer-providers; subcontracting offers a route to reduce the risk of market entry for these employers as they develop their in-house capacity.

Mixed Level delivery: More employers are recognising the value of apprenticeships for existing as well as new staff and we are seeing a rise in demand for higher and degree level apprenticeships. Subcontracting provides a useful route to provide employers with an integrated, multi-level apprenticeship offer delivered by further and higher education partnerships.

For Subcontractors

Subcontracting not only allows the main provider to make a more substantial offer to an employer, it also aids the subcontractor. Some of the benefits include:

- The main provider has all the resources to support the subcontractor in meeting all the contractual and compliance requirements associated with delivering a high-quality offer. Thus, the subcontractor does not need to develop this capacity for itself and can concentrate on excellent delivery.
- The main provider has the 'back office' capacity and expertise to provide the subcontractor with contractual quality management and audit systems, to provide the same level of support would be extremely costly, particularly for smaller providers.
- The main provider makes it easy to see the relationship between the services provided and the overall fee charged. It would cost the subcontractor far more than the fee taken by the main provider to develop a similar level of support in house.
- The main provider must support their subcontractors across all aspects of delivery; through the relationship with the main provider, subcontractors

are able to develop compliance processes and Management Information Systems, improve teaching, learning and assessment and access CPD to help upskill staff and improve understanding of Prevent and Safeguarding duties.

- The main provider is able to support the subcontractor in the development of new approaches and give confidence to the subcontractor to take on such work. The main provider can also be a 'critical friend' when a subcontractor is considering such change.
- The main provider shares policy and rule shifts with subcontractors and can explain their implications and support the subcontractor to adapt their practice accordingly.
- Through the main provider, learners and employers can access a wide range of additional services that the subcontractor could not afford to put in place.
- The main provider relationship gives subcontractors a place to share effective practice and in which to develop new approaches.

1.4.6 A shared sectoral responsibility for the maintenance of quality in subcontracted activity

It is important to recognise that apprenticeships are changing in the wake of the reforms, for example in the delivery of greater volumes of higher level and degree apprenticeships. Within this type of provision, partnerships between further and higher education providers should be encouraged to support employers and learners effectively.

Models of delivery within all apprenticeships, and the range of organisations involved in delivering and supporting learning, are likely to continue to expand and present new challenges and opportunities. Whilst we need to ensure that such opportunities are not unnecessarily restrained by the rules, it is important that we recognise the need to ensure that the apprenticeship offer remains high quality.

To ensure that subcontracting develops to fully support a high quality apprenticeship offer for employers and learners, all stakeholders need to take collective responsibility to assess risks and appropriately manage the quality of provision. It is possible that subcontracting models may emerge that do not fully align with the funding rules and apprenticeship policy intent. Providers of all types need to inform the ESFA if they are approached to participate in such subcontracting activity. In return, providers and other stakeholders should

expect government to investigate, challenge and respond swiftly to ensure all can be confident in the management of subcontracting within apprenticeships.

The ESFA process for reporting concerns can be accessed via phone or email:

nationalhelpdesk@apprenticeships.gov.uk

0800 015 0400

There is also a QAA process for concerns that can be followed if it relates to the quality of the apprentice experience of the 'course/programme' for all degree and some higher level apprenticeships -<http://www.qaa.ac.uk/reviewing-higher-education/how-to-make-a-complaint> This applies during course delivery, rather than earlier.

The remainder of this Guide concerns itself with delving into the depths of the funding rules and other requirements that support high quality delivery within apprenticeship subcontracting.

SECTION 2 – Preparatory Work

Getting ready for the delivery of subcontracted provision

2.1 Introduction to this section from the Education and Skills Funding Agency

The ESFA has been invited to write sections 2 and 3 of this guidance.

We (ESFA) recognise that subcontracting of apprenticeship delivery can be important to meeting employers' diverse apprenticeship training needs, but we must be confident that it delivers high quality and represents good value for money. Our rules are focused on supporting providers in their selection and management of subcontractors so that a broad and high-quality training and on-programme assessment offer is available to employers.

Our publication '[Using subcontractors in the delivery of apprenticeships - policy background and examples](#)' explains more about the intent of our rules and we give some illustrative examples. We recommend reading the document in full, but we have included some of its main points here.

All commentary within this section in italics has been added to this section by AoC and is intended to aid with interpretation of the ESFA funding rules. This commentary has been screened by ESFA.

2.2 Policy background

Government's apprenticeship reforms are designed to put control back into the hands of employers so they will gain the skilled workforce they need to compete globally. As part of this, ESFA want to make sure that employers can choose how they work with providers and their subcontractors to deliver high quality training that meets their needs.

The rules for subcontracting are designed to increase the quality of subcontracted provision and to ensure that employers have a direct relationship with their main provider. ESFA believe it is important that government funds are not diverted away from training and assessment in the form of fees and other charges, and so the intent of the rules is to make sure that the lead and subcontracted providers both add value to the employer's apprenticeship programme.

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.

ESFA will continue to look closely at subcontracting practices, and will consider making further changes over time if necessary. They will work with employers and providers to make sure subcontracting practices are proportionate, deliver good value for taxpayers and good outcomes for employers and apprentices.

Employers have requested flexibility in the arrangements they make for the delivery of their apprentices' training. They want the choice to be able to:

- work only with one provider and expect that provider to deliver all of their apprentices' training*
- work only with one provider, with the expectation that the provider will manage a network of subcontractors*
- work directly with a number of providers*

2.3 Intent of ESFA Rules

Providers told ESFA that they would like to understand more about the policy intent and flexibility of two of the apprenticeship subcontracting rules. These rules are copied below:

A. 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. *(P159 in 2018/19 apprenticeship funding rules for training providers, version 1)*

B. You can use delivery subcontractors to complement your own delivery if requested by an employer and agreed at the start of an apprenticeship. Within an employer's apprenticeship programme (conditional on paragraph A) delivery subcontractors can deliver full or part-apprenticeship training for frameworks and standards.' *(P161 in 2018/19 apprenticeship funding rules for training providers, version 1).*

In the policy background and examples document, providers' most commonly asked questions regarding these rules are answered. These are repeated below. The answers aim to provide more guidance on the policy intent of the rules and their flexibility; they are designed to complement the rules, not to change or replace them.

2.3.1 What is meant by an employer's 'apprenticeship programme'?

An employer's **apprenticeship programme consists of all of the apprenticeships a main provider, and its subcontractors if applicable, is delivering for an employer.** Naturally, the scale and make-up of an employer's programme may vary from month to month or from year to year.

The programme may consist of just a single apprentice, or a defined number of apprentices starting the same apprenticeship at the same time with the same planned end date. Equally, the programme may be more complex, with rolling start and end dates, several different apprenticeship standards, and varying numbers of apprentices per intake. *The programme may also be delivered across multiple sites and involve different levels*

When an employer's apprenticeship programme includes subcontracted delivery, the main provider will draw up a written agreement with the employer specifically to set out which parts of the programme will be delivered by the main provider and which parts by the subcontractor. By keeping this agreement up to date, changes in delivery over time can be recorded.

The ESFA's funding rules contain more information about what should be included in the written agreement under the heading 'Your written agreement with each employer'. *(P169 in 2018/19 apprenticeship funding rules for training providers, version 1)*

2.3.2 What is included within the definition of 'delivering apprenticeship training and/or on-programme assessment'?

The ESFA definition includes:

- Off-the-job training through a training provider, or evidenced costs for employer-provider delivery. This could include some or all of the training aspects of a licence to practise or non-mandatory qualification. In both cases there must be a clear overlap between this training and the knowledge, skills and behaviours needed for the apprenticeship *standard (P93.1 in 2018/19 apprenticeship funding rules for training providers, version 1)*
- Regular planned on-programme assessment (progress reviews) to discuss progress to date against the commitment statement and the immediate next steps required. *(P93.3 in 2018/19 apprenticeship funding rules for training providers, version 1)*
- Self-directed distance learning (where it forms only a part of the learning experience), interactive online learning (virtual classrooms) or blended learning relating to the off-the-job training element of an apprenticeship' *(P93.4 in 2018/19 apprenticeship funding rules for training providers, version 1).*
- Time spent by employees/managers supporting or mentoring apprentices; this must be directly linked to the apprenticeship training and assessment, including end-point assessment, and be in addition to generic line management responsibilities. Mentoring must impart new learning to the apprentice directly linked to the achievement of the apprenticeship by a more senior or experienced member of staff. The apprentice must not be doing productive

work. *(P93.7 in 2018/19 apprenticeship funding rules for training providers, version 1).*

- An apprentice taking part in a skills competition if the employer and main provider agree that participation in the competition directly contributes to helping that individual achieve the apprenticeship standard. *(P93.11 in 2018/19 apprenticeship funding rules for training providers, version 1).*

Whilst other categories of eligible costs are set out in the ESFA's apprenticeship funding rules, these are **not** included in the definition of 'delivering apprenticeship training and/or on-programme assessment':

- *Costs associated with registration and examination (including certification) associated with mandatory qualifications (excluding licences to practice). (P93.2 in 2018/19 apprenticeship funding rules for training providers, version 1).*
- Materials (non-capital items) used in the delivery of the apprenticeship framework or standard. By materials (non-capital items) the ESFA means the equipment or supplies necessary to enable a particular learning activity to happen. These items would not normally have a lifespan beyond the individual apprenticeship being funded. *(P93.5 in 2018/19 apprenticeship funding rules for training providers, version 1).*
- Any administration directly linked to training and assessment, including end-point assessment. This includes costs relating to the ongoing development of existing teaching materials, lesson planning, the processing of the ILR and quality assurance. *(P93.6 in 2018/19 apprenticeship funding rules for training providers, version 1).*
- Additional learning to resit an exam linked to a mandatory qualification, or required to retake an end-point assessment. *(P93.8 and P93.9 in 2018/19 apprenticeship funding rules for training providers, version 1).*
- Accommodation costs for learning delivered through residential modules where the residential training is a mandatory requirement for all apprentices. By mandatory we mean that there is a specific requirement in the apprenticeship standard which would apply equally to any apprentice, regardless of their location, employer or training provider. Any costs for residential modules must represent value for money. *(P93.10 in 2018/19 apprenticeship funding rules for training providers, version 1).*

A table to identify eligible costs that can and cannot be included when 'delivering apprenticeship training and/or on-programme assessment'

| <i>Eligible Funding Cost</i> | <i>Can be included in 'delivering apprenticeship training and/or on-programme assessment'</i> | |
|---|---|-----------|
| | <i>YES</i> | <i>NO</i> |
| <i>Off-the-job training through a training provider, or evidenced costs for employer-provider delivery. This could include some or all of the training aspects of a licence to practise or non-mandatory qualification. In both cases there must be a clear overlap between this training and the knowledge, skills and behaviours needed for the apprenticeship standard</i> | <i>Y</i> | |
| <i>Registration, examination and certification costs associated with mandatory qualifications excluding license(s) to practice (even when mandated)</i> | | <i>N</i> |
| <i>Regular planned on-programme assessment (progress reviews) to discuss progress to date against the commitment statement and the immediate next steps required.</i> | <i>Y</i> | |
| <i>Self-directed distance learning (where it forms only a part of the learning experience), interactive online learning (virtual classrooms) or blended learning relating to the off-the-job training element of an apprenticeship'</i> | <i>Y</i> | |
| <i>Materials (non-capital items) used in the delivery of the apprenticeship framework or standard. By materials (non-capital items) the ESFA means the equipment or supplies necessary to enable a particular learning activity to happen. These items would not normally have a lifespan beyond the individual apprenticeship being funded</i> | | <i>N</i> |

| | | |
|--|----------|----------|
| <i>Any administration directly linked to training and assessment, including end-point assessment. This includes costs relating to the ongoing development of existing teaching materials, lesson planning, the processing of the ILR and quality assurance.</i> | | N |
| <i>Time spent by employees/managers supporting or mentoring apprentices; this must be directly linked to the apprenticeship training and assessment, including end-point assessment, and be in addition to generic line management responsibilities. Mentoring must impart new learning to the apprentice directly linked to the achievement of the apprenticeship by a more senior or experienced member of staff. The apprentice must not be doing productive work</i> | Y | |
| <i>Additional learning and/or the cost to resit and exam linked to a mandatory qualification</i> | | N |
| <i>Additional learning required to retake and end-point assessment</i> | | N |
| <i>Accommodation costs for learning delivered through residential modules where the residential training is a mandatory requirement for all apprentices. By mandatory we mean that there is a specific requirement in the apprenticeship standard which would apply equally to any apprentice, regardless of their location, employer or training provider. Any costs for residential modules must represent value for money</i> | | N |
| <i>An apprentice taking part in a skills competition if the employer and main provider agree that participation in the competition directly contributes to helping that individual achieve the apprenticeship standard</i> | Y | |

Can all eligible costs (P93 in 2018/19 apprenticeship funding rules for training providers version 1) listed in the rules be considered to be ‘delivering apprenticeship training and/or on-programme assessment?’

No. There are some costs (as noted above) that are eligible to be funded, but DO NOT count as ‘delivering apprenticeship training and/or on-programme

assessment'. OK, but what does that mean when it comes to subcontracting? It means:

- *All eligible costs can be funded – regardless of who is delivering.*
- *The main provider cannot count the eligible costs that are identified by ESFA as NOT counting towards 'delivering training and/or on-programme assessment' as being a part of their 'of substance' contribution to an employer's apprenticeship programme*
- *In theory, if a third party organisation is delivering an 'eligible' cost item that **cannot** count towards 'delivering training and/or on-programme assessment', then it can be funded and managed by the main provider outside the ESFA subcontracting rules*

2.3.3 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'?

The policy intent of this part of the funding rules is:

- for providers to be empowered to meet the individual apprenticeship needs of each employer they are working with
- to reflect the position that main providers on the Register of Apprenticeship Training Providers must be training providers and not managing agents
- to support the fact that the vast majority of employers have a large number of providers to choose from so it is unreasonable for a provider and employer to be working together if the provider has no real training offer to make to a particular employer

The ESFA does not define or quantify 'substance' in absolute terms. They 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. **The ESFA does not expect auditors to determine compliance with this rule against an arbitrary quantification of 'substance'.**

The ESFA is explicit that 'substance' does not mean brief input at the start of each employer's apprenticeship programme or a token amount. Instead, the

focus should be on the subcontractor's delivery complementing the main provider's delivery for each employer they are working with.

There is no requirement for a main provider to deliver some of each apprentice's training or on-programme assessment. What is important is the main provider being able to demonstrate that they are delivering something of substance for that employer according to the parameters of the employer's apprenticeship programme and that what is being delivered is training and/or on-programme assessment, rather than other eligible costs that wrap around the delivery of training and on-programme assessment. (*see table above*).

Individual provider legal entities that have links with other provider legal entities such as being in the same group, sharing directors, having the same ownership or sharing the same brand must remember that, if they are co-delivering an employer's apprenticeship programme, ESFA define this as subcontracting and they must follow all of the subcontracting rules.

Future ESFA review

The ESFA will keep their document, 'Using subcontractors in the delivery of apprenticeships Policy background and examples,' under review through testing the value it is adding in supporting employers and providers in delivering quality apprenticeships. It is to be hoped that this 360 guidance, the QAA's document Quality Assuring Higher Education in Apprenticeships: Current Approaches, and the ESFA document will provide sufficient clarity for providers to have the confidence to manage their subcontracting arrangements effectively within the rules. In addition, higher education providers must ensure that their provision meets the expectations set out in the Quality Code; they are also provided with advice and guidance that underpins the Quality Code. All QAA documentation is available here www.qaa.ac.uk

*The ESFA are responsible for the apprenticeship funding rules. They regularly review these rules and, where it is clear that a change is necessary, due to new policy or to aid understanding, amendments are made and a new version of the rules is issued. This document is based on the funding rules as at August 2018 (2018/19 apprenticeship funding rules for training providers, version 1). Readers of this guidance must check that they **are complying with the most up-to-date version of the rules at all times**. Whilst the purpose of this guide is to provide practical advice and guidance, changes to the funding rules might make all or*

*part of the content incorrect. The continuous review planned for this publication should avoid that situation, but **the responsibility lies with the reader to ensure that they are working with the most up to date funding rules.***

SECTION 3 – ESFA audit of main provider’s subcontracting arrangements

3.1 Introduction to this section from the Education and Skills Funding Agency
The ESFA has been invited to write sections 2 and 3 of this guidance.

The ESFA recognise that subcontracting of apprenticeship delivery can be important to meeting employers’ diverse apprenticeship training needs but we must be confident that it delivers high quality and represents good value for money. The rules are focused on supporting providers in their selection and management of subcontractors so that a broad and high-quality training and on-programme assessment offer is available to employers.

All commentary within this section in italics has been added to this section by AoC and is intended to aid with interpretation of the ESFA funding rules. This commentary has been screened by ESFA.

The ESFA checks compliance with the funding rules. The subcontracting of new apprenticeship starts from 1 May 2017 is included in the tests the auditors undertake.

The ESFA looks to publish the audit working papers, which include tests on subcontracting. The working papers provide details of the specific tests undertaken. They are updated periodically with the current papers published here:

<https://www.gov.uk/government/publications/sfa-financial-assurance-funding-assurance-review-programmes>

This means that Auditors will use the ESFA rules that were in force at the time of each apprenticeship start that they consider. In some instances the rules vary, so main providers must keep this in mind when preparing for audit.

This section covers the areas that the auditors will test in relation to each provider’s subcontractors.

3.2 Audit questions for subcontracting

Each audit area addresses an associated funding rule. The funding rules can be found here: <https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018> and [here for 2018/19](#).

Main providers should consider all the ESFA rules in scope for audit of apprenticeships. This is a useful exercise for a main provider to undertake during on-going due diligence and management processes. If this forms part of your due diligence, you can be confident that audit will not throw up anything unexpected.

3.2.1 Main providers directly delivering training or on-programme assessment (P157, P158 and P159 in 2018/19 apprenticeship funding rules for training providers, version 1)

Direct delivery of apprenticeship training and/or on-programme assessment of some substance in volume by the training provider/employer-provider.

As has been made clear in Section 2, the auditor will not be making a judgement here, they will be requiring evidence of your contribution to each employer's apprenticeship programme where subcontracting is seen. This evidence will of course be given to the ESFA, who may well make a judgement as to its substance.

3.2.2 Agreeing the use of subcontractors with employers

(P160 to P168 in 2018/19 apprenticeship funding rules for training providers, version 1)

Focus on the relationship between the relevant employer and the training provider and coverage of subcontractor involvement.

Here the auditor will be looking for evidence that the employer has been engaged in the decision to use subcontractors and in their selection. All the details of the subcontractor's involvement should be clearly noted within the delivery plan for each apprentice and within the overarching contract with the employer and with each subcontractor. All this information should correspond.

3.2.3 Reporting the use of delivery subcontractors to ESFA

(P188 and P189 in 2018/19 apprenticeship funding rules for training providers, version 1)

Information consistent with what the training provider/employer-provider has recorded on the subcontractor declaration.

Main providers need to provide a delivery subcontractor declaration when requested by the ESFA. This will be twice a year. In addition, if things change you will need to update the declaration you submitted. This information then should match the actual subcontract relationships you are involved with.

3.2.4 Special conditions for subcontracting to organisations not on the register of apprenticeship training providers

(P184, P185 and P186 in 2018/19 apprenticeship funding rules for training providers, version 1)

Evidence that the subcontractor meets the appropriate requirements according to their register status.

The main provider will need to demonstrate how they have determined that a subcontractor not on the RoATP is not receiving more than £100,000 from all the main providers they may be working with in any financial year.

3.2.5 Special conditions for subcontracting to 'supporting' providers

(P181, P182 and P183 in 2018/19 apprenticeship funding rules for training providers, version 1)

Evidence that the subcontractor meets the appropriate requirements according to their register status.

Here the main provider will need to demonstrate how they know the subcontractor to be a 'supporting provider' and how they have assured themselves that that subcontractor is not receiving combined payments from main providers in excess of £500,000 in any financial year.

3.2.6 The written agreement with each employer if a main provider and an employer agree the use of delivery subcontractors

(P169 in 2018/19 apprenticeship funding rules for training providers, version 1)

Signed written agreement in place with each employer, including mandatory requirements.

There are currently 8 mandatory clauses that must be included within your contract with the employer who agrees to the use of subcontracting and the auditor will expect to see evidence that all 8 clauses are within your contract with the employer. These clauses are in addition to the contractual requirements of direct provision in apprenticeship delivery.

3.2.7 Delivery of apprenticeship training and on-programme assessment by delivery subcontractors

(P170 to P175 in 2018/19 apprenticeship funding rules for training providers, version 1)

Focus on written agreements to evidence changes in delivery arrangements agreed by all parties. Appropriate procedures in place for monitoring its subcontractors.

Reporting of inconsistencies in applying the funding rules by the subcontractor to the ESFA.

The auditor will be looking for evidence that you are in direct control of the quality of all subcontracted delivery, again the auditor will not make a judgement as to whether your quality assurance checks are 'regular and substantial', but they will require evidence of your QA procedures and that they have been carried out and, if subsequent action has been required, how this has been evidenced within the written agreements (that must be kept 'up to date'). The rules give specific actions that must be included within your QA processes so you need to be familiar with the detail of these rules. You also need to ensure that your procedures include notifying ESFA of any inconsistencies in the application of the funding rules that you may find within your subcontractors.

3.2.8 Contracting with delivery subcontractors

(P176 and P178 in 2018/19 apprenticeship funding rules for training providers, version 1)

Legally binding agreement in place covering the mandatory requirements.

The ESFA rules clearly list some items that must be included within your written contract with each delivery subcontractor. The auditor will not only be looking to see that there is a contract in place, but that this contract includes the clauses stipulated with the ESFA rules.

3.2.9 Special conditions for subcontracting to employer-providers

(P179 and P180 in 2018/19 apprenticeship funding rules for training providers, version 1)

Evidence of actual costs for employer-providers when subcontracting.

It is up to the main provider to ensure that the apprentices are employed either directly by the employer-provider or through a connected company as defined by HMRC. Employer-providers can only receive funding for the actual cost of delivery and should not profit from their involvement. The auditor will want to see evidence to support any payments made to employer-providers.

3.2.10 Range of areas related to delivery of apprenticeships in scope of the 'Addendum 1' to the funding rules

The subcontracting rules were amended for the delivery of non-levy funded apprenticeship new starts from 1 May 2017 to 31 December 2017 (or 1 May 2017 to 31 March 2018 for non-procured new starts delivered by providers under a contract extension). The different rules were set out in the 'Addendum 1' to the apprenticeship funding and performance management rules. These were published on gov.uk. The following areas relate specifically to this delivery.

- subcontracting for the first time written approval
- published supply-chain fees and charges policy containing all mandatory terms
- for 'provision subcontracting', reporting of the actual level of funding paid and retained for each subcontractor
- second-level subcontracting permission
- evidence provided by subcontractor for co-investment contribution

*These **apply only to delivery started within the time periods noted above.** Delivery for starts outside these times do not have rules relating to written approval or published fees and charges. All fees retained need to be noted within the written agreement with the employer and within the contract with the subcontractor, regardless of type of subcontracting, and no second level subcontracting is permissible. The collection of co-investment by a subcontractor is no longer a subject covered within the ESFA funding rules on subcontracting.*

3.2.11 Annual external auditor report

*(P177 in 2018/19 apprenticeship funding rules for training providers, version 1)
If the total apprenticeship contracts with your delivery subcontractors exceeds £100,000 in any one financial year, then you must obtain an annual report from an external auditor that provides assurance on the arrangements you have in place to manage and control your delivery subcontractors. The ESFA have produced [guidance as to the nature of the report](#) and [a template certificate](#). This report is discussed in more depth in Section 7.*

SECTION 4 – Quality Judgements in subcontracting

4.1 Ofsted and subcontracting of apprenticeships

You will be aware that Ofsted has begun to report in more detail about the management of subcontractors, the quality of teaching, learning and assessment and the impact of that on the outcomes for apprentices in subcontracted provision. While inspections have reported that poor

management of subcontracted provision leads to poor quality training and outcomes for apprentices, many subcontractors provide high quality education and training and ensure that their apprentices have a great learning experience.

Ofsted’s approach to the inspection of subcontracted provision of all types is through the inspection of directly funded providers. Around 40% of directly funded providers do not use any subcontractors, while 60% do. In 2016/17 subcontracted provision was worth around £860 million – approximately 12% of the overall funding allocation for the further education and skills sector. Of that £860 million, almost half went to 180 subcontractors, each receiving £1 million or more in funding.

The policy on subcontracting remains as it has been. The Ofsted handbook is clear. Paragraph 36 states: “Ofsted reserves the right to inspect and grade any subcontractor and its provision as a separate entity against this framework and handbook.” Ofsted report on subcontractors through its inspection of main providers. The question is, does Ofsted report on subcontractors in enough detail through these inspections?

For each inspection that Ofsted carries out, if the provider subcontracts provision, then Ofsted will have data about that. Lead inspectors delve into the data about subcontractor performance and report on that performance throughout the inspection report, highlighting strengths and areas for improvement relevant to the provision they inspect.

Considering the data example below, providers should be able to draw up a list of points that the lead inspector might want to consider with them during the inspection.

| | Cohort 14-15 | AR* | Cohort 15-16 | AR* | Cohort 16-17 | AR* |
|---------------------|--------------|-----|--------------|-----|--------------|-----|
| 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% |

*Achievement Rate

Here, the lead inspector would probably want to look at the rationale behind increasing the size and value of subcontracting with providers that have declining and low achievement rates. They would also review what leaders and managers were doing about declining performance, and what they learned from the very good subcontracted provision. If, at the time of inspection, the provider was no longer using some of the subcontractors the lead inspector would still explore why it took so long, given the impact on learners and apprentices.

While there is no change in policy, there is certainly a change in focus. The skills minister and members of the Education Select Committee are very interested in subcontracting. They perceive a system that delivers poor results and poor value for money. What they do not see is that, taken as a whole, subcontractors outperform main providers, possibly because the main provider has selected subcontractors carefully to deliver specialised provision in areas that the main provider does not cover. That might be so, but Ofsted inspection reports do not really reveal that.

To increase the level and detail of inspection and reporting around subcontractors, Ofsted have increased the inspection tariff of directly funded providers that use subcontractors to deliver provision.

Ofsted have also carried out a limited number of monitoring visits, through directly funded providers, to review the quality of subcontracting arrangements. It found that subcontracting is changing significantly, at least in part, linked to funding-rule changes and the apprenticeship levy. Ofsted have seen some providers expanding their subcontracting, but on inspection, they have also seen a number of providers drastically reducing and reorganising their subcontracted provision. In some cases, providers brought subcontractors and subcontracted provision back in house.

It is vital that Ofsted acts to challenge the sector during this period of change. It will be doing what it can to ensure that these changes do what they should, namely deliver the high-quality education and training that apprentices and employers deserve.

Section 7 contains more detail on what Ofsted will expect to see within apprenticeship subcontracting.

4.2 Quality Assurance Agency (QAA), the Quality Code and subcontracting

The QAA and the Quality Code recognise that a variety of arrangements for delivering learning opportunities with others (i.e. subcontracting) exist within higher education, including apprenticeship models, and that these can **present a range of benefits and opportunities**. These include, for example, flexible entry routes which may widen access to higher education, access to additional expertise and facilities, and curricula that are related to contemporary working practices and the needs of employers and employees. The Quality Code also **acknowledges the risks relating to quality and standards** that will come with subcontracting. Where the arrangements break down there are likely to be difficulties for the apprentices, and the reputation of the participant organisations and UK higher education could be damaged. The advice and guidance that underpins the Quality Code includes a theme on Partnerships which should be useful to new and existing providers of higher education.

The QAA have carried out several reviews of higher education where a variety of subcontracting arrangements have been involved, including transnational delivery. Common findings from these reviews give these examples of good practice:

- Robust due diligence arrangements, which included reviews of safe working practice procedures to safeguard student health, wellbeing and learning.
- Up-to-date legal partnership agreements with clear procedures for programme and partnership termination to protect student interests.
- Written agreements that set out the roles and responsibilities of employers or placement providers, whilst the student was in the workplace setting.
- Clear, reliable and trustworthy work placement information for students and work-based mentors.
- Seamless integration of work-based learning and placement components in the programme design.
- Target setting and feedback mechanisms that involve the student, the employer and the academic tutor.

SECTION 5 – What are we seeking to avoid/promote in subcontracting?

As mentioned previously, changes to the ESFA funding rules and the recent apprenticeship reforms have removed the opportunity for some of the practices described below. These are included in this guide to help explain how subcontracting is changing alongside many provider and employer behaviours within apprenticeship delivery. This section is included to remind all stakeholders of the mistakes of the past, and to make it clear what behaviours should not be allowed to become a part of apprenticeship subcontracting landscape of the future.

5.1 Uncommitted allocation mid-year

This was a rather common reason for subcontracting in previous years, where a provider is given a funding allocation to spend within a specific time period, and failure to achieve this level of expenditure would have negative consequences for the following year. Within apprenticeship delivery to levied employers this circumstance is no longer present, and government policy intends to remove allocations given to providers for non-levied employers in favour of funding routed through a more employer driven system. In the past providers have been expected to hit a specific allocation – no more and no less – and subcontracting provided a way to turn delivery on and off to control the funding commitment over the year. Some providers planned for this well ahead of time and contracted with subcontractors before a time of crisis. Others waited until an underspend was inevitable and then rushed through the process of subcontracting without appropriate due diligence and/or without putting effective management structures and processes in place. Funding rule changes make this type of subcontracting all but obsolete.

5.2 Good practice requires continuous improvement

It is easy to fall into the habit of tweaking what was done in the previous year, rather than making radical changes. In the matter of subcontracting year on year data – as shown in the Ofsted section (4.1) above – should help determine what is done in subsequent years. If a providers' self-assessment report was to show a fall in achievement, that provider would expect to put in place a plan to bring achievement rates back up, having identified the causes for the drop. The same level of management should be applied to subcontractor provision, but in some instances such fall off in achievement rates has been ignored by the main provider and that provision has been allowed to continue. It is hard to justify the continued funding of a subcontractor that is showing a decline in achievement year on year, particularly where the main provider has taken no steps to manage that drop as they would within their own direct provision.

5.3 The benefits should be for the employer and the learner

Subcontracting should not be seen solely as a profit centre. That is not to say that the main provider should see themselves out of pocket for providing a service to their subcontractors, but they should ensure that what they offer is of value. All parties should see themselves gaining from the arrangements put in place, not exploited. Subcontracting for the sole purpose of profit is all but gone due to funding rule changes, the work of Ofsted and accepted practices across most providers. Potential main providers who cannot justify their funding retention level should be referred to ESFA for investigation (see contact details in section 1.3.5 above). Likewise, subcontractors need to be realistic as to the cost

incurred by the main provider in providing the services that they do. Such charges should be clear in the fees and charges policy of the main provider.

5.4 Effective subcontracting requires good management

Good subcontracting requires strong leadership from the main provider. The main provider needs to show a clear commitment of resources dedicated to their subcontracted provision. Too often in the past subcontractors have been left to manage themselves and the relationship with the employers that they are working with. Within the new rules this is no longer the case. The main provider needs to be the one negotiating with the employer and holding the direct contract with them. For some, this is quite a big shift and ESFA audit and Ofsted will be looking for more than a token level of management, control and delivery and/or on programme assessment from the main provider.

5.5 There should be a strategic reason for subcontracting

Subcontracting from a main provider perspective, should always fit within that providers overarching strategy. Potential subcontractors may well approach potential main providers, but this does not lessen the need for due diligence on both sides. The main provider needs to assess whether the type of subcontracting will fit with their overarching business strategy and if they have the capacity to support the provision effectively in the first instance. Having answered these questions, the main provider needs to consider what the subcontractor has to offer and what value it will add to employers and apprentices. There are many details the main provider must consider before agreeing a subcontract and these are considered further in Section 7.

5.6 The Future

As identified in many of the examples above, most ineffective subcontracting has been prevented within publicly funded apprenticeships in England through changes to the funding rules and the inspection regime. The shifts to a more flexible, responsive and commercial market place for apprenticeships in England is likely to result in the development of new partnerships as the market responds to the varied demands of employers. New subcontracting relationships are an inevitable consequence of the emerging market.

It is in the interests of all to ensure that effective subcontracting remains an integral and positive part of the apprenticeship delivery system, and that we can all be confident that where subcontracting is a part of the offer, it is about enhancing apprenticeship delivery, not about removing funds from front line delivery. Front line delivery requires robust management, administration and systems that sit behind it, and these are all a part of the overall cost of delivering an effective offer.

SECTION 6 – VAT and subcontracting

VAT is levied by most goods and services provided by registered organisations to other organisations or individuals. The laws and rules relating to VAT are complicated and **it is necessary to take legal advice from professionally qualified advisors**. The rest of this chapter provides some starting points for making decisions but should not be relied upon as VAT advice.

The issues that need to be taken into account in arranging further education sub-contracting include:

- VAT is only charged by organisations with turnover above the registration threshold (£85,000 in 2018-19). Companies or charities with turnover below the VAT threshold do not charge VAT.
- VAT was introduced when the UK joined the EU and will continue after the UK leaves the EU because it is an important source of tax revenue (£110 billion a year). UK VAT legislation is compatible with EU law. The EU Withdrawal Act translated EU law into UK law and in the near future Brexit will not change UK VAT laws.
- A number of services are exempt from VAT including insurance, finance, credit, education and training. Where an activity is exempt, sales do not count towards taxable turnover for VAT purposes. When people or organisations buy exempt items, there is no VAT to reclaim.
- The law and rules about what exactly is defined as “education” or “vocational training” are complicated with issues around the boundary. In a recent court case, the European Court of Justice decided that the bills for a college training restaurant should be VAT exempt because the activities were education rather than a commercial service. There were specific circumstances in this case and HMRC has rejected applications from some other colleges because their training restaurants are organized differently but the point of relevance is that there can be complicated definitional issues at the boundary of education and training. [HMRC VAT notice 701/30](#) explains some of the issues
- Education, vocational training and closely related services provided by colleges, universities, schools, government departments, NHS organisations and other eligible bodies in VAT law is exempt from VAT in most circumstances. Where colleges are working as sub-contractors for

further education activity, they should not generally add VAT to their invoices.

- Education, vocational training and closely related services supplied to colleges and other eligible bodies is also exempt from VAT in most circumstances. [HMRC VAT notice 701/30](#) explains two of the circumstances where the service is not VAT exempt and where VAT must be charged. One of those cases is where an individual or employer pays part of the cost from their own resources. The second case is where there is a contract for the separate supply of management services.

When putting together sub-contracting arrangements and contracts, the key points to remember are:

- VAT is an organisation-wide responsibility. There are financial penalties from HMRC if organisations submit VAT returns that have careless or deliberate inaccuracies.
- In a sub-contracting relationship, it is the sub-contractor's responsibility to apply the correct VAT treatment and to charge the right amount of VAT. If a sub-contractor accepts a contract from the main provider that uses the wrong interpretation then, legally it is the sub-contractor's fault. If the sub-contractor then decides to charge VAT on a contract that previously did not involve VAT, then an important issue will be whether the contract amount is "VAT inclusive" (in which the sub-contractor needs to bear the 20% VAT charge) or "VAT exclusive" (in which case the 20% VAT charge can be added to the contract price). Either way, the two parties find themselves in a relationship which is less financially rewarding than it was previously.
- Problems can be avoided up front by careful specification of which organization will do what and reflection of this in the paperwork. People often describe the work that a main provider does in a sub-contracting relationship as "management" but it might be more precise to describe the services as quality assurance, educational advice or other forms of support. It is important then not only to be clear about what services are being provided, but also to consider the terminology used to describe them.

SECTION 7 – Key considerations in subcontracting – a detailed reference

7.1 Prior to Subcontracting – the main provider

As with apprenticeship delivery, there is much to do prior to signing a contract between a main provider and a delivery subcontractor, and managing an apprenticeship delivery offer that includes subcontractors.

7.1.1 Strategic alignment and governance

The main provider should be able to trace the business rationale and approval for the use of subcontracting through all levels of management and governance. A key criticism from Ofsted regarding subcontracting, concerns the lack of senior management engagement. It is important that there is recognition of the role that subcontracting might play within the delivery of apprenticeships at all levels in the main providers' organisation. The main providers' expertise in the management of subcontractors and their capacity and will to incorporate subcontracting within their apprenticeship offer, needs to be reflected in the overarching strategy of the main provider, and with the full knowledge and support of the senior leadership team and any governance body. In turn this means that subcontracting is a planned and integral part of the provider's strategy and not an afterthought or emergency measure. This type of alignment and senior management understanding gives confidence to ESFA, Ofsted, OfS and QAA that subcontracting has been duly considered within the organisation.

Where subcontracting is at the insistence of the employer, the potential main provider should consider how (and indeed if) the delivery model fits within their overall strategic direction and if they can genuinely support the arrangement effectively across all levels of the organisation to the satisfaction of ESFA, Ofsted, OfS and QAA.

When the apprenticeship includes a higher education award, the contract between a main provider and a subcontractor will need to recognise specific duties that apply to higher education providers. It should be noted that all higher education providers that have the legal powers to award UK degrees are responsible for the academic standards and quality of the higher education qualifications that they award. This applies irrespective of the location/s in which programmes leading to those awards are delivered, who is involved in delivery, or whether they are delivered in conjunction with professional or other qualifications. Accordingly, degree-awarding bodies, such as universities, are responsible for the academic standards and quality of any higher education qualifications that they offer as part of apprenticeships. This means that when designing, developing and approving apprenticeships involving higher education qualifications, degree awarding bodies must ensure that those higher education qualifications meet the expectations for academic standards and programme design set out by the Quality Code. The Quality Code recognises that there is

much to be gained from working in partnership with others to deliver higher education, but that these arrangements need to be managed effectively. Advice and [guidance](#) provided by the QAA should be referred to alongside this guide, where the apprenticeship involves higher education or a higher education award at levels 6 and 7.

7.1.2 The role of the employer

In the past there has been no role for the employer within subcontracting. This has changed substantially within the apprenticeship reforms. The main provider must have the agreement of the employer to the use of subcontractors and they must understand what role that subcontractor is to play. The use of delivery subcontractors can be at the instigation of the employer, or the main provider may suggest it whilst negotiating the delivery plan for the employers' apprenticeship programme. If it is at the instigation of the employer and the provider has no expertise in the management of subcontracting, then that provider will have to carefully consider the implications for their organisation as they will continue to shoulder full responsibility for the quality of all delivery, regardless of who is delivering.

The **employer may be the subcontractor** in which case they must either be on Register of Apprenticeship Training Providers (RoATP) as an employer-provider, or main provider, or their combined funding for delivery must not exceed £100,000 in any one funding year (1 April to 31 March). The main provider will need to check that the employer is not receiving any funding from any other providers for apprenticeship delivery to ensure that this limit is not exceeded. Where the employer is involved in delivery, it can only be paid for the actual cost of the delivery that it undertakes and it must not profit from apprenticeship delivery to its own staff. If the employer is a subcontractor, the main provider will need a legally binding contract to cover the subcontracting arrangement in addition to any contract that covers the overall apprenticeship delivery agreement. This can be achieved through separate or integrated contracts.

7.1.3 Delivery subcontractor selection processes

Where there is a choice between subcontractors, a main provider needs to establish transparent selection criteria that map across to the main providers' obligations to ESFA. Ultimately the main provider must sign a legally binding contract with each subcontractor, so using an effective and consistent approach to selection makes sense. Even where there is no choice, the main provider must satisfy itself that the subcontractor is in a position to deliver what is required from all angles and to the level of quality required by the main provider, ESFA, Ofsted and OfS/QAA where appropriate.

A main provider can choose to work with a subcontractor that does not meet all the necessary requirements, but where this is the case the main provider should be very clear as to the actions that will be undertaken to mitigate against any shortfalls or identified risks within the subcontractor.

If the level of subcontracting to be undertaken is quite large, the main provider should satisfy themselves that they are operating within the Public Contracts Regulations 2015

http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf

It is up to the main provider to satisfy themselves that any potential subcontractor has everything that they need to deliver high quality training as a part of an apprenticeship delivery programme. In the first instance this is provided through a due diligence process.

7.1.4 Due diligence

It is not enough that a subcontractor is listed on RoATP as either a main, employer or supporting provider, or that the work they undertake will amount to less than £100,000 in any one funding year (1 April – 31 March). The main provider must undertake its own due diligence to satisfy itself that the subcontractor is capable of delivering what is expected of them. The ESFA requires that the main provider keeps evidence that this has been done and that it is available for inspection by the ESFA.

What can/should be included within the due diligence process? The main provider needs to understand the organisation that they will be working with and make informed and evidenced judgements as to their capacity and capability, so due diligence can include:

- Organisational overview – management structure, directly employed staff
- Company structure – legal, operational, financial
- The rationale for the relationship
- Evidence of appropriate capacity and expertise within staff
- Evidence of previous delivery and results
- Consideration of added value
- Current QA systems
- Current status with ESFA/other funding bodies
- Relative size of potential subcontract proportionate to the rest of their business

- Checks to ensure no second level subcontracting¹
- Financial health check
- References from third parties
- Site inspection visit including health, safety, safeguarding, prevent, etc

In addition, due diligence must include:

- Robust procedures to ensure that extremist organisations are not funded through subcontracting. (*P166 in 2018/19 apprenticeship funding rules for training providers version 1*).

Effectively, the main provider must satisfy themselves as to the level of risk to which they are exposing themselves, their employers and apprentices, and the ESFA by working with the subcontractor. If the potential subcontractor presents some risks, the main provider needs to determine whether those risks are acceptable and manageable, or if they are sufficient to prevent the partnership from progressing.

As a result of full due diligence, a main provider may decide that they can approve the subcontractor unconditionally as they are fully satisfied with the subcontractors' capacity and capability. They may decide to accept the subcontractor, but with conditions because of some identified areas of concern. Where a main provider determines not to progress to contract they should be in a position to offer the subcontractor formal feedback explaining the reasons.

In a situation where the employer has put forward the subcontractor and the main provider's due diligence assesses that provider as unsuitable, the ESFA rules require the main provider **not to work** with them, even if this means that the employer will not work with the main provider. Whilst this seems harsh, there are a few things to consider in such a circumstance:

- All potential main providers should arrive at a similar position if they have undertaken robust due diligence. If a subsequent main provider does go ahead, the original main provider may choose to share their findings with that main provider and/or the ESFA
- An employer who is insisting on working with a provider that you find to be unsuitable, may not be an employer with whom you wish to work.

¹ Second level subcontracting can be inadvertent, for example a subcontractor may use a self-employed person to deliver for them. This is second level subcontracting as your subcontractor is contracting with a third party for delivery. All staff who deliver need to be in the direct employ of your subcontractor

Due diligence is an essential phase in determining how tangible and effective the partnership will be in delivering the needs of employers and apprentices and time spent undertaking this can prevent negative experiences further down the road. Once initial due diligence is completed, the main provider and subcontractor should have a reasonable idea of what they can expect from each other and should be in a position to move to negotiating a contract.

Due diligence should not be seen as a one-time activity that is completed ahead of a contract being agreed and signed. The information on which the due diligence is based should be reviewed at appropriate time intervals, for instance the financial accounts of the subcontractor might need to be reviewed annually, changes to the governance structure should be required to be notified to the main provider (and vice versa), the total value of the subcontractors apprenticeship provision will need to be checked to ensure that it has not crossed the £100k/£550k thresholds.

7.1.5 The Contracts

The ESFA require the main provider to hold a number of contracts covering apprenticeship delivery, one of which is a 'legally binding contract with each delivery subcontractor' (*P 176 in 2018/19 apprenticeship funding rules for training providers, version 1*). There are certain clauses within the contract that ESFA insist upon:

Subcontractors must:

- Keep to ESFA funding rules
- Provide Individual Learner Record (ILR) data to the main provider to ensure accurate delivery information is passed to ESFA
- Allow ESFA or any person nominated by them, access to their premises and documentation related to the delivery of funded apprenticeships
- Supply the main provider with sufficient evidence to allow for the assessment of their performance against Ofsted's Common Inspection Framework (CIF) and/or the QAA Quality Code
- Supply the main provider with evidence incorporated into a self-assessment report and to guide judgements and grades within that self-assessment
- Ensure all staff are suitably qualified to provide the agreed apprenticeship training
- Co-operate with the main provider to ensure continuity of learning for apprentices should the subcontract cease for any reason

- Alert the main provider should evidence of any irregular financial or delivery issues arise, such as an inadequate grade from Ofsted, complaints from apprentices or any other relevant party
- Not use the funding they receive to launch their own bids from European funding, nor use it as match funding for ESF projects

A main provider will probably want to include some further clauses within the contract and subcontract to ensure the smooth operation of the contract and to ensure that there is an agreed procedure to follow should things go wrong for any reason. It is quite likely that each subcontractor will work with the main provider on more than one employer's apprenticeship programme, in order to allow for this, the contract should be structured to allow for the incorporation of multiple schedules of activity covering the specific requirements for each employer. In turn these schedules should be designed to allow for additions/alterations to the offer provided to each employer. The subcontractor contract needs to reflect the content of the main provider contract with both the ESFA and the employer(s) that the lead and subcontractor are working with. This should include what should happen when a subcontractor undergoes a change of circumstance.

Where the subcontractor is contracted to a main provider on an apprenticeship that involves higher education or a degree, as previously stated, the higher education provider remains ultimately responsible for the quality and standards of delivery across the whole programme of higher education provision, and robust mechanisms to monitor third party delivery must be in place.

In order to support providers in managing their contractual obligations with subcontractors, and following extensive consultation with their members, AoC and UVAC commissioned the development of a contract template for use with subcontractors that meets the requirements of ESFA, AELP have also produced a similar document. The latest versions are in line with ESFA Apprenticeship funding and performance rules for training providers, version 6. The contract template includes a schedule document that allows the inclusion of the specifics of each subcontracting arrangement with each employer. The contracts are specifically designed to balance the needs of both the main provider and the subcontractor.

ESFA also require the main provider to resolve any issues and disputes between the employer and a subcontractor and it should be the main provider's written complaints and dispute resolution procedure, policy and process that is used in all instances. It therefore sensible and highly desirable to incorporate this within your contract with the subcontractor and the employer. The main provider

should also ensure that the employer and the apprentice(s) are aware that they can contact the Apprenticeship Helpline should they wish; the contact number and website must be included in your contract with the employer and within the apprentice's commitment statement.

Your contract or written agreement with the employer must also reflect the nature of the subcontracting arrangements that have been agreed (*P169 in 2018/19 apprenticeship funding rules for training providers, version 1*). You must set out:

- The apprenticeship training and/or on-programme assessment that you will directly deliver.
- The amount of funding you will retain for your direct delivery.
- The apprenticeship training and/or on-programme assessment that each delivery subcontractor will contribute to the employer's apprenticeship programme.
- The amount of funding you will pay each delivery subcontractor for their contribution.
- The amount of funding you will retain to manage and monitor each delivery subcontractor.
- The support you will provide each delivery subcontractor in exchange for the amount of funding you will retain.
- The monitoring you will undertake to ensure the quality of the apprentice training and/or on-programme assessment you have contracted your delivery subcontractors to carry out.
- Any actual or perceived conflict of interest between you and any delivery subcontractors. For example, where you and a delivery subcontractor are part of the same group, share common directors or senior personnel, or where you will benefit financially from using a particular delivery subcontractor.

These requirements are in addition to those required within the provider / employer contract that covers the overall apprenticeship programme for that employer. These are all aspects that you will cover in the negotiations that you undertake with the subcontractor and the employer, so should not add significantly to the administrative burden.

7.1.6 Fees and Charges

High quality subcontracting is a way of allowing for the development of effective partnerships between providers. The partnership should be fair and transparent, with both sides being clear as to what they are gaining from working together. The partnership should also provide a positive impact for the

employer and apprentice(s) involved. If the lead provider is not undertaking any delivery directly related to the delivery subcontractor's provision, for example where the subcontractor is delivering a full, niche apprenticeship within a broader apprenticeship programme, it would be highly unusual for any fee to exceed 20% and generally it would be expected to be less.

As the delivery of every standard is bespoke to the employer and the apprentice, so it should be expected that there be variation within the services (and thus the fees and charges) provided to each subcontractor, and a variation in the services provided by each subcontractor to the main provider.

In the section concerning due diligence (see 7.1.4) the level of risk was discussed, this is also a factor when determining the level of exposure that the main provider is subjecting themselves to. The main provider retains full responsibility for the provision and must satisfy themselves that they have sufficient resource to discharge this duty effectively. The subcontractor must be confident that they have sufficient resource to undertake the delivery for which they are being contracted. Within the current rules, the main provider directly manages the relationship with the employer, the cost of this also needs to be recognised.

There is therefore much to negotiate between a main provider and a subcontractor and the establishment of a 'one size fits all' percentage fee makes very little sense within the delivery of apprenticeships. If either side feel that a balance cannot be struck, then they should walk away from the relationship. Without allocations and with direct access to funding through the RoATP, there are fewer reasons than before for entering in to a subcontract relationship purely to access funds. In fact, the need for the main provider to hold the contract with the employer makes the relationship between lead and subcontractor very different, and the circumstances where subcontracting is appropriate changes.

If a subcontractor genuinely believes that the main providers' proposal for fees to be charged is based purely on financial gain, they should inform the ESFA. In turn, the main provider should expect to justify their proposed fee level and be clear as to what services the subcontractor can expect from them in return. In the past the subcontractor had significantly more autonomy. Now the funding reforms and rule changes make it very clear that all responsibility sits with the main provider and it is the main provider who is very clearly in charge of the overall apprenticeship programme and the relationship with the employer. All agreed services on both sides need to be captured within the contracting arrangements both between the main provider and the subcontractor, and between the main provider and the employer. Over time, as the relationship

develops it should be possible to revisit the fees charged and the range of services provided. Such reviews can be built into the on-going due diligence activity.

7.1.7 External assurance on subcontracting controls

The main provider is also required to obtain an annual report from an external auditor where the total level of subcontracting will exceed £100,000 in any one financial year (P177 in 2018/19 apprenticeship funding rules for training providers, version 1). The report needs to consider the arrangements that are in place to manage and control subcontractors and ESFA may ask for sight of the report and will require a certificate to confirm that the report provides satisfactory assurance.

The annual report covers all types of subcontracting, not just that undertaken with apprenticeships and the figure of £100,000 per annum refers to all ESFA funding types, such as AEB and apprenticeships.

The ESFA have produced [guidance as to the nature of the report](#) and [a template certificate](#). The guidance document does not stipulate the precise nature and structure of the report. It is up to the main provider and the chosen external auditor to determine this. The report is not sent to ESFA. They require a Certificate signed by both the main provider and the external auditor to say that the report has been received by the main provider. They may subsequently request sight of the report.

Whilst not stipulating the precise format and content of the report, ESFA are clear that it covers all the systems and controls in place for the relevant year and that it covers the 'end-to-end' subcontracting process and subcontracting requirements set out within your funding agreement and the relevant ESFA funding rules. Effectively then, it will be a written account of the audit process described in Section 3.

Once complete, the report must be reviewed by the main provider's accounting officer or senior responsible person who needs to sign off the Certificate. The Certificate (and no substitute) once signed by the main provider and the external auditor, must be sent to CF1718.SUBCONTRACTING@education.gov.uk by 31 July annually. (There is an exception for 2017/18 when the deadline for submission is 14 September 2018).

The external auditor's work is undertaken at the cost of the main provider. If a main provider is not clear as to whether they are in scope for this process they

can contact the ESFA Service Desk on 0370 267 0001 or email SDE.SERVICEDesk@education.gov.uk

7.1.8 Approaches to fees and charges

Traditionally fees and charges have been combined into one overall percentage of funding that the main provider has retained from the funding received. Whilst this approach is easy to administer, it does not provide a transparent line of sight for an external observer to determine what a subcontractor (and thus an employer and an apprentice) is gaining from the main provider. In the current apprenticeship funding rules, main providers must be precise in articulating exactly what they are bringing to the apprenticeship delivery programme, and this must be laid out in the contract with the employer and the contract with the subcontractor.

It is also clear that the cost of providing a service to one subcontractor is not necessarily duplicated with another subcontractor, there are other factors to consider that are likely to be concerned with the level of risk the main provider is being exposed to and the amount of resource that will be required to provide the service in each instance.

Best practice would suggest that the most effective fees and charges are:

- negotiated with each individual subcontractor and regularly reviewed
- clear in what is being provided by the main provider
- clear in what is being asked of the subcontractor
- have a calculation, sitting underneath any overall percentage, that explains how that percentage has been arrived at
- shared with the employer

Government policy is attempting to establish a more commercial approach to apprenticeship provision, with the employer as the key customer. For such an approach to work, providers need to be free to negotiate their own pricing structures in support of the delivery models that they adopt. It is only in a 'monopoly style' situation – where the prospective main provider can deny access to a market, or is such a substantial player that it can dictate a fee regardless of cost, that poor practice is likely to still be seen, and these practices should be obvious to all. It is not generally in the best interests of establishing a responsive supply side in apprenticeships, to restrict one of the key routes that allows responsiveness and innovation in delivery models to flourish.

7.1.9 Considerations when determining fees and charges

As mentioned previously, risk is a key assessment factor when determining fees and charges. Assessment of risk is in addition to all due diligence checks. Risk assessment may of course lead to a decision (on either side) to not progress with the subcontract arrangement. Here is a risk factor checklist for both the main provider and the subcontractor to consider:

- duration of the contract
- overall value of the contract
- value of the contract as a portion of the employer's apprenticeship programme
- industrial sector(s) and vocational area(s) and level
- geographical spread of contract
- ease of oversight of prevent and safeguarding, health and safety, etc
- the required outputs
- previous track record in similar delivery (non-completion, timely achievement)
- presence/absence of qualified staff and level of supervision/training needed
- subcontractor staff turnover and ease of staff replacement
- sensitivity of the programme (possible impact on reputation/profile of the main provider)
- strategic alignment of the contract

The main provider needs to have a method of scoring risks in order to determine how the level of risk exposure is reflected within the fees and charges offered for each subcontract. In best practice all aspects of the process of determining fees and charges will be available to all thus ensuring transparent, open and fair practice.

7.1.10 Services that a main provider might agree with a subcontractor

Generally the main provider should attempt to apply all the quality assurance (QA) processes that they apply to their in-house delivery to their subcontractors. This then prevents the need to develop a whole new approach to QA and allows the subcontracting management team to make use of the pre-existing internal structures to support QA. It will of course be necessary to add to these procedures to ensure full QA coverage within subcontracting. All processes should be about a robust cycle of planning, delivery, review and improvement for the subcontractor and the main provider.

Appendix A identifies an approach to providing effective quality assurance (QA) in subcontracting. This is not the only way to achieve QA, but is worth considering what has been included and reflecting on your own practice as a main provider.

7.1.11 Planning delivery and the employer contract

It is clear in the ESFA rules that main providers and subcontractors should be identified within the main contract with the employer that covers the complete apprenticeship programme to be delivered. That contract must include evidence that the employer is in agreement about the use of subcontractors and identify:

- What the main provider is delivering directly
- The amount of funding that will be retained for the main providers' delivery
- What each subcontractor is delivering
- The amount of funding that will be given to the subcontractor for their delivery
- The support the main provider will give to each subcontractor
- The amount of funding that the main provider will retain to manage and monitor each delivery subcontractor
- The monitoring the main provider will undertake to ensure the quality of the work undertaken by the subcontractor
- Any possible conflicts of interest that may exist between the main provider and the subcontractor

There should therefore, be no way of keeping the subcontracting relationship and its costs a secret from the employer or the ESFA! Certainly not if the rules are being followed. The penalty for failing to meet the rules is ultimately the loss of your contract with the ESFA and with it, access to any apprenticeship funding.

7.1.11 Planning management, monitoring and quality assurance processes

Before delivery begins the main provider and the subcontractor should agree on the services that will be provided and how these will be managed (not just the amount that will be charged for them). The amount of support a subcontractor needs is likely to vary significantly, and it is up to the main provider to determine what is required. Unknown subcontractors, for example, will probably be subject to more rigorous and frequent levels of monitoring, than those that the main provider has been working with for a while.

The ESFA require certain management and monitoring elements to be included within the subcontracting relationship. These are included to satisfy ESFA that you have taken responsibility for all the actions of subcontractors and that you are in a position to carry overall responsibility for the quality of delivery undertaken by subcontractors.

The ESFA rules insist that the main provider carry out regular and substantial quality assurance checks on subcontracted activity. These checks must include visits at short notice and face-to-face interviews with staff and apprentices. The checks must cover the eligibility and existence of apprentices, and involve direct observation of initial guidance, assessment and delivery as agreed within the subcontract. The point of these checks is to ensure that the delivery meets the main provider's, ESFA's, Ofsted's and OfS/QAA's expectations of delivery, and that what is happening matches what the subcontractor has recorded. Where the main provider finds discrepancies, these need to be reported to the ESFA, and of course managed by the main provider.

A main provider and subcontractor may agree to further activity and the frequency of checks may well vary between subcontractors and for an individual subcontractor over time. As a general rule when considering what to include within the quality assurance process, it would make sense to try and duplicate the checks and management processes that are in place to assure the quality of provision delivered directly by the main provider. This will provide a simple way of ensuring that all provision is compliant for funding and meets programme requirements, and allows for variations in the level of support provided. Whatever is agreed should allow for review on a regular basis. Effectively then the main provider will act as a 'surrogate ESFA, Ofsted and OfS/QAA' for the subcontractor. It is important then that the monitoring checks undertaken are measurable and thresholds are set for acceptable levels. By ensuring that this is the case, both the lead and the subcontractor will know when remedial action is likely.

As the subcontractor will no longer hold a 'profile' of apprenticeships to deliver in most instances, the range of potential monitoring opportunities changes. The subcontractor will not have progression and destinations results or timely success figures – these will all belong to the main provider. The main provider then must identify and monitor at a more granular level. The checks could include:

- Progression checks based on pre-agreed monitoring points (captured with contracts)
- Learner satisfaction checks which differentiate between delivery partners
- Employer satisfaction checks which differentiate between delivery partners
- Subcontractor lesson/delivery observation and feedback
- Compliance spot checks for all requirements stipulated in the contract including prevent, safeguarding, etc

The main provider should also be in a position to supply a range of services to a subcontractor that are commensurate with the needs of that specific contract. It is ultimately up to the main provider to determine what support the subcontractor requires. In most instances though this should be as a result of assessment of, and discussion with that subcontractor, not a 'one size fits all' model. The types of service that a main provider might offer:

- Feedback on broader survey results
- CPD on teaching, learning and assessment (TLA), specific to the subcontract and/or more broadly, including accredited qualifications
- Support with infrastructure development
- CPD on prevent, safeguarding, equality and diversity, British values, etc
- Mock inspection, reviews and financial audit checks to ensure understanding and compliance
- Opportunity to observe main provider practice in the delivery of TLA or associated services (eg self-assessment report preparation and improvement planning, quality dashboard, etc)
- Learner recruitment services
- Learner pre-assessment services
- Access to full MIS support
- Accredited information, advice and guidance for subcontractor staff
- Networking opportunities with other providers and subcontractors
- Support with accessing RoATP and developing to undertake direct delivery

ESFA are currently reviewing fees and charges policy and there is no intent to impose a cap on the fee charged by a main provider. However, the ESFA will have clear expectations of main providers as to the amount that should be taken in fees and charges and providers should expect further clarity on these expectations and on effective practice from ESFA.

7.2 During the Apprenticeship programme delivery phase

If sufficient time has been given to due diligence and planning for delivery, the actual delivery phase should merely require the participants to stick to the plan. However, things do not always run to plan and the relationship needs to be flexible enough to allow for change (as does the contract). When changes occur these need to be communicated to all who need to know (which may include ESFA) and the delivery plan will need to be updated across all relevant contracts and even with commitment statements where an apprentices' individual learning plan is affected. It is the main provider's responsibility to ensure that this occurs.

The main provider should be monitoring all aspects of the subcontractors' activity. Where this monitoring reveals shortcomings, the main provider must be in a position to support the subcontractor to improve to the required standard. If such remedial action is required in addition to what has been previously identified and agreed, this may well impact on the relationship and the cost of managing that relationship. Again, such circumstances should be recognised and covered within the contract so that both parties are aware of the consequences.

Ofsted will be particularly interested in instances where shortcomings were identified and then to see what actions were put in place to remedy the problem and to what timescale and how monitored?

Where degree-awarding bodies work with subcontractors to deliver awards, the subcontractors will need to operate assessment processes within the academic framework and regulations of the degree awarding body.

During the delivery phase, the main provider and subcontractor need to do what they have agreed and the main provider needs to ensure that they manage the relationships between themselves, their subcontractors, employers and apprentices effectively. The main provider also needs to ensure that the employer and the apprentices are fully aware of the relationships between the main provider and the subcontractor and are comfortable with them. This is probably something best dealt with during the induction phase of the apprenticeship.

7.3 Complaints and appeals from apprentices

Broadly, apprentices undertaking a higher or degree apprenticeship which is delivered by a higher education provider, are students of that higher education provider. Therefore, the apprentices should have recourse to the provider's student complaints and academic appeals processes just as other students do.

Where more than one provider is involved in the delivery of the apprenticeship, the contractual arrangements between the providers and any applicable funding rules will help determine where the responsibilities lie between the providers, including the handling of complaints and academic appeals from apprentices.

Within HE delivery however, this is subject to the requirements for a higher education provider with UK degree-awarding powers where the provider remains responsible for the academic standards and quality of the higher education qualifications that it awards, regardless of how or where the programme is delivered. The provider that awards the higher education qualification in the apprenticeship arrangement should, therefore, always

conduct the final stage of the concerns, complaints or appeals process about that qualification. It should also conduct the final stage of the process if the complaint is about the academic quality or standards of the apprentice's learning experience as a student of that provider. Contracts with employers and subcontractors should allow for this requirement.

7.4 After subcontracting

Even following extensive due diligence and preparation, it is possible that the subcontracting arrangement needs to come to a conclusion. It is critical that the contract between the main provider and the subcontractor covers what will happen in a range of predictable scenarios – for example where one party ceases to trade, or where one party has repeatedly failed to provide the services that it is contracted to provide. By recognising that things may go wrong and having an agreed way of dealing with such occurrences, makes it less stressful to deal with if it occurs, and makes for less uncertainty for the apprentices and the employer.

7.4.1 Processes to terminate

The contract that exists to support the relationship between the main provider and the subcontractor should provide a process whereby either side can terminate the agreement. It is important to ensure that neither party can just simply decide not to complete their obligations within the contract. Termination should be undertaken using an agreed methodology and only under certain circumstances. The process should recognise that the needs of the learners and employers come first in the considerations. The section below is taken from the AoC template and it identifies contract might be terminated.

Circumstances where the Apprenticeship Subcontractor Contract might be terminated include:

- Where the subcontractor or main provider were to go bust;
- Where either party are unable to continue with the work due to a breach of the ESFA funding rules;
- where either party repeatedly breaks/fails to fulfil the terms of the contract, or
- where the work itself is no longer going ahead.

Having determined the circumstances when termination is acceptable, it is also wise to ensure that the contract spells out the need for continuity of learning should the termination occur during programme delivery.

Appendix A

An approach to effective FE delivery, subcontractor quality assurance

Requirements of subcontractor, including Quality Lead:

- subcontractors must nominate a quality lead who embeds quality improvement within the institution. The quality lead attends quarterly standardisation meetings with the main provider's Quality team to share best practice and to review key quality developments
- All subcontractor teaching staff are observed by the main provider team with robust observation reports produced to inform quality improvement activity (the reports also include learner voice feedback). Main provider observation activity is targeted based on the risk register of subcontractors which is regularly reviewed by SMT
- New subcontractors are required to provide access to their teaching and learning staff records to enable the main provider to inform their due diligence process.
- All subcontractor staff are invited to attend the main provider's themed Inset Days which provide the opportunity for cross main provider best practice sharing and focused quality improvement discussion
- Subcontractors are fully embedded into the main provider's annual self-assessment report and quality improvement plan cycle and are required to attend a panel meeting with senior team members where their self-assessment and quality improvement plan will be challenged (with questioning in line with the Common Inspection Framework)
- Subcontractors are also embedded into the main provider's termly Quality Review Meetings where the distance travelled against the targets agreed in the quality improvement plan will be measured
- The main provider's Quality team attend subcontractor standardisation meetings throughout the year to embed quality improvement
- The Quality team review all awarding organisation reports and ensure any identified actions are embedded into the main provider's own quality assurance monitoring and improvement activity
- The main provider undertakes internal inspections of subcontractor's provision, conducted by HMI's, where subcontractors are provided with their own report detailing actions required to improve their quality (which are subsequently embedded in their quality improvement plan).
- The main provider undertakes best practice visits to other main providers to ensure QA processes in place are reflective of the best processes being used in FE.
- Every subcontractor has a Designated Safeguarding Lead (DSL) who works in line with the main provider's own policy and reports incidents on a monthly basis back to the main provider. The DSL's must attend regular safeguarding, Prevent and radicalisation update training, facilitated by the main provider's own DSL
- All subcontractor staff, including Managing Directors, are also mandated to attend regular safeguarding, Prevent and radicalisation training facilitated by the main provider's DSL
- The main provider is in regular dialogue with Ofsted and has recently discussed the implementation of the new subcontractor monitoring visits with senior officials
- The main provider has implemented Google Drive to capture all observation activity, undertaken either by the main provider's own observers or by qualified subcontractor staff (including the nominated quality lead), in a centralised location. The observation reports include learner voice and action plans for teachers (which are used to measure distance travelled).

- Every subcontractor will be using Pro Monitor, part of the main provider's Pro Suite, the record learner progress from August 1st 2018. This tracking will be for both qualification (down to unit level) and non-qualification elements of the learner journey, mapping directly into the common inspection framework.

Main provider support to subcontractors in the wider business context

- Monthly 1-2-1s via face-to-face and dial in meetings to discuss performance against KPIs
- Ensure growth, development, delivery and evaluation of main provider partnerships to ensure sustainable opportunities of funding
- Establish annual targets for performance and income from main provider partnership network alongside partner capacity and capabilities
- Ensure that partners fully comply with a robust audit trail that meets stakeholders requirements including the ESFA
- Devise quality interventions where required when delivery falls below minimum level of performance/expected performance
- Monthly performance monitoring 'dashboard' reports detailing learner details, enrolment, completion, withdrawal activity, learner voice, overdue items such as learner reviews, registration numbers, framework certificates. Feedback/analysis on return
- Apprenticeship Moodle for post May 2017 starts with e-learning materials for learners
- Safeguarding training for Partner assessors and DSLs to keep them up to date with legislation, policies and procedures for reporting incidents
- Access to safeguarding telephone number to record incidents 'out of hours'
- Due Diligence - yearly refresh and constant updating of records such as staff lists/org charts
- Contract/spend management. Ensure all partners have correct contracts in place for funding streams/over delivery and that all have the necessary signatures to be legally binding
- Contract advice/steer. Help on wording of policies/procedures/ad hoc contracts
- Co-ordination and management of FE Choices annual ESFA learner and employer surveys
- Distribution of employer 'welcome to main provider' handbooks
- Distribution of learner 'welcome to main providers' handbooks
- Learner satisfaction survey input and feedback to partners to aid improvement of processes/report on value added/potential career progression/salary increases
- Monthly/weekly ESFA updates distributed to partners
- Updates to funding bands, funding rules, policy changes, industry changes distributed as known to ensure partners are well informed and 'ahead of the game'
- Webinars/events attended regularly with upcoming changes discussed with partners
- Quarterly group partner meetings - whole day events for the consortium with all aspects of the partnership, quality and compliance, future planning presented
- Best practice advise, particularly regarding in-house roles to support safeguarding, etc.
- Announced and unannounced audit visits on delivery partners to test: learner existence, the adequacy of tracking procedures, the quality and frequency of learner assessments and teaching, and the adequacy of learner data and records. Frequency of visits is risk based.
- Announced and unannounced OTLA visits to delivery partners with feedback reports. Includes learner voice direct from visits. Frequency is risk based.
- Feedback to all teaching staff observed in both verbal and written form identifying areas of good practice and areas requiring improvement

- Quality review meetings with quality leads to cover all aspects of compliance and ensure best practice
- One to one sessions with key staff within partners to support with quality assurance and compliance requirements and Ofsted common inspection framework
- Attend partners standardisation meetings to support in key areas relating to the requirements for quality, Ofsted's common inspection framework and compliance. When required complete training session with teaching staff during the meetings
- DSAT Report checks to ensure data accuracy
- End of year SAR reports/advice/help on the writing
- Archiving, storage and retrieval: All internal & external archived apprenticeship learner packs
- Data input: learner reviews, scanning documents, framework certificates & other input data
- Cloud server management (drop box) to allow transfer of data e.g. learner reviews
- Archive file checking to ensure data accuracy against system
- Telephone calls to learners capturing learner feedback
- Design/distribution of suite of learner evidence paperwork, such as enrolment, completion, withdrawal paperwork
- Audit process of learner files by contracts and learner data team
- Raising and resolving of paperwork queries to ensure learner files comply with funding rules before enrolment to safeguard main provider/partners against audit failures/clawback
- Paperwork training sessions for partner administration staff
- ILR management alongside monthly financial payment reports
- Access to main provider facilities and resources relevant to subcontracted delivery

Additional activity undertaken for first time partners who are newer to the market / apprenticeship delivery?

- Devise/support the development of business and quality improvement plans
- Support with policy, procedure and guidance implementation
- Advise on VAT returns, financial returns and Companies House requirements
- Advise on effective workload models and optimising the performance of staff (KPI's)
- Support the development of provision working collaboratively with employers and the provider
- Write/support RoATP and ROTO applications
- Write collaborative bids to support business growth
- QA and compliance support provided during the first year of their operation with the main provider to manage risk and ensure high quality results
- Signpost to other growth opportunities (funding streams for example)
- Support the set-up of in house administration functions to adequately pre audit paperwork before submission to the main provider


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