



Education & Skills
Funding Agency

Guidance for conducting due diligence checks on subcontractors

Guidance

September 2021

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Introduction

We formally decommissioned ROTO on the 31 July 2021. Our [subcontracting funding rules for ESFA funded post-16 funding \(excluding apprenticeships\) 2021 to 2022 - GOV.UK](#) have been updated to reflect this.

We set out in our funding agreements and funding rules the requirement for providers we fund to carry out their own thorough due diligence checks when appointing delivery subcontractors and ensure that you continue to undertake and review these checks on an annual/ongoing basis with each of your delivery subcontractors.

The purpose of this document is to give providers additional information about this requirement and outline the information we need from them on an annual/ongoing basis.

This guidance must be read alongside our funding agreements and the associated funding rules for the provision being delivered.

Further to the [consultation](#) and subsequent [response](#), this guidance is for the 2021 to 2022 funding year. An ESFA standard has been developed for the 2022 to 2023 funding year. This guidance will be in place until further notice.

Providers in scope

Providers are in scope of the requirement to share a minimum level of due diligence with the agency if they are using a subcontractor who receives an aggregate value of £100,000 or more ESFA funding, but does not have a direct relationship with the agency, in the 2021 to 2022 academic year (1 August 2021 to 31 July 2022). Schools and academies are not in scope as they are governed by other assurance processes.

Apprenticeship subcontractors are managed by RoATP and as such are excluded/out of scope for this requirement. This aggregate value will apply to all other post-16 funding streams (AEB, traineeships, ESF and 16 to 19 provision and any other post-16 funding streams which are created throughout the 2021 to 2022 funding year). For the avoidance of doubt, in the case of adult education budget (AEB) provision, this applies to providers delivering ESFA AEB (for learners' resident in non-devolved areas). In areas where the AEB has been devolved, Mayoral Combined Authority (MCAs)/Greater London Authority (GLA), are responsible for the funding rules (including any rules on subcontracting) which apply in their areas.

Definitions

Subcontractor means a person or organisation that has entered into a subcontract with the provider and is a separate legal entity or an individual that has an agreement (called a subcontract) with you to deliver any element of the education and training we fund. A

separate legal entity includes companies in your group, other associated companies, and sole traders. An individual could include a person who is a sole trader, self-employed or employed by an agency unless those individuals are working under your direct management and control in the same way as your own employees.

Subcontract means an agreement entered into between the provider and a subcontractor for the purposes of engaging the subcontractor to deliver part of the services on behalf of the provider.

Process

When appointing delivery subcontractors, you must carry out your own thorough due diligence checks. As a minimum, you must undertake checks identified in the following paragraphs.

1. Due diligence checks on subcontractors, as a minimum must apply the criteria in the [funding higher risk organisations and subcontractors policy - GOV.UK](#). This sets out when a provider is high risk and therefore not eligible to be appointed as a subcontractor.
2. You must also ensure any subcontractor has the financial ability to deliver the requirements of the subcontract. The following link provides information to help you [undertake financial assessment of the subcontractor](#). We are not prescribing the process that the provider must follow in undertaking the financial health checks. It is the provider's role to carry these checks out.
3. You should refer to the list of declared subcontractors to determine if a subcontractor that you intend to use or are using already holds subcontracts with other organisations.

Process if the subcontractor I am using receives £100,000 or more

4. For subcontractors in receipt of an aggregate subcontract value of ESFA funding for delivering education and training that totals £100,000 or more for each funding year, or where the subcontract from you would take the total value of such subcontracts to £100,000 or more, you must share the results of your checks with us via a signed return on the template at Annex A provided by the dates provided to you.
5. We will notify all providers in scope of this exercise following the 2021 to 2022 collection of subcontractor declarations.
6. You must return your form to using [ESFA Document exchange](#). Your form (template at Annex A) must be returned in word document (.doc) and Portable Document Format (.pdf) format.

- a. To upload your documents:
 - i. log into Document exchange
 - ii. select 'Send a new document'
 - iii. choose 'Subcontractor due diligence return' as the document type
- b. You can view more guidance on how to use Document exchange in the [user guide](#).

7. We will review your signed return as part of our compliance arrangements.

Process if the subcontractor I am using receives £500,000 or more

8. For subcontractors in receipt of an aggregate subcontract value of ESFA funding for delivering education and training that totals £500,000 or more for each funding year, or where the subcontract from you would take the total value of such subcontracts to £500,000 or more, you are required to share the financial information of your subcontractor with the agency for a formal financial health assessment. If not received within 4 weeks, the submission will fail. All Agency assessments of independent training providers are by design formulaic to ensure that each submission undergoes the same robust analysis and examines 3 common ratios (Profit after Tax, Current Ratio and Gearing, which is an analysis of debt). The information required and the format of that information is contained in our financial health guidance which can be found [financial health guidance for organisations contracting with or applying to ESFA](#).

Providers can check if they are in-scope to take any action or if they have any other questions by contacting the Service Desk on 0370 267 0001, or email: SDE.SERVICEDesk@education.gov.uk.

Annex A

Guidance for completing the subcontractor due diligence form

This guidance is for lead providers to submit information about their subcontractors to enable the ESFA to carry out checks through the [subcontractor due diligence form](#).

It covers:

- guidance on the questions in the form
- next steps after your submission

Section 1 – Documents to read

We advise that you read and familiarise yourself with all the documents linked in this section.

Section 2 – Your subcontractors organisation

This section forms part of due diligence checks to help safeguard public funding.

2.0.1: What is your subcontractors UK Provider Reference Number (UKPRN)?

To obtain a UK Provider Reference Number (UKPRN) you need to register via this link:

<https://www.ukrlp.co.uk/ukrlp/ukrlp.first>

2.0.2: What is the registered legal name of your subcontractor's organisation?

The registered legal name of your subcontractor's organisation is:

- their company name or name of their limited liability partnership, if registered with Companies House
- their charity name, if registered with The Charity Commission (of England and Wales), The Charity Commission for Northern Ireland or the Scottish Charity Regulator
- their full name, if registered as a sole trader
- their partnership name, if registered as a partnership

2.0.3: If they trade under a different name, what is their trading name?

A trading name is different to your registered or legal name. It is also known as a 'Business name'.

2.0.4: What is their UK registered business address?

This must be a registered business address in the UK and not a residential address. For companies this will be their registered office address on Companies House.

2.0.5: What is their company number?

This is their company number with Companies House. Enter 'NA' if their organisation is not a company or a limited liability partnership.

2.0.6: If registered with a charity commission or regulator, enter their Charity Registration Number

This is their Charity Registration Number with The Charity Commission (of England and Wales), The Charity Commission for Northern Ireland or the Scottish Charity Regulator.

2.0.7: What is the legal status of their organisation?

Please select the appropriate legal status of their organisation from the options list.

2.0.8: How long have they been actively trading?

Your organisation is 'actively trading' when it is:

- carrying on a business activity such as a trade or professional activity
- buying and selling goods or services with a view to making a profit or surplus
- providing chargeable services

It does not include start-up or set-up costs, these are not proof of actively trading.

2.0.9: What type of organisation are they?

Please select the appropriate type of organisation you are from the options list.

2.0.10: How would you classify their organisation?

To help you answer the question, we have explained the options:

- ‘public service mutual’ - an organisation that has left the public sector but continues to deliver public services
- ‘sheltered workshop’ - an organisation that employs people with disabilities separately from others
- ‘small or medium enterprise’ - defined by the European Commission
- ‘third sector’ - a voluntary or community organisation (for example, a registered charity, an association, self-help group or community group, a social enterprise, a mutual or a co-operative)

Section 3 – Person/s in control

3.0.1: Who is in control of their organisation? Full name and date of birth (DD/MM/YYYY)

3.0.2: Enter their partner organisations name and date of birth (DD/MM/YYYY)

We have provided a template at Annex A on the form that you must complete. You must provide details for their senior management team responsible for the delivery of training. For each person you must provide their:

- full name
- job role
- time in role, in years or months
- who they report to
- details for other organisations they are involved in who are receiving funding directly from Education and Skills Funding Agency (ESFA) or as a subcontractor

Section 4 – Your subcontractors declarations, criminal convictions, and compliance

4.0.1: Have you considered the high-risk policy when undertaking due diligence of your subcontractors?

4.0.2: Does your subcontractor fall into any of the mandatory exclusions?

4.0.3: Does your subcontractor fall into any of the discretionary exclusions?

To help you answer these questions, we have explained:

Criminal convictions

- ‘anyone who represents, supervises or has control in their organisation or

a partner or parent organisation', includes members of their group of economic operators, directors, partners, or anyone who has powers of representation, decision, or control

- 'majority shareholders, current directors, senior employees', includes individuals with 25% or more shareholding, directors who are still in a position of authority and any senior employees with significant influence or control within their organisation

If you answer "Yes" to any of these exclusions, you should include additional evidence in the box provided.

When providing additional evidence consider including:

- conviction dates and whether these are spent
- full names of the people involved
- a summary of the offence
- outstanding judgements or legal proceedings, what they are and how long they are expected to run
- any additional actions they have undertaken in relation to the offence

Compliance

If you answer "Yes" to any of these questions, you should include additional evidence in the box provided.

When providing additional evidence consider including:

- a summary, including relevant dates and the type of proceedings where if appropriate
- name and address of administrators if in administration or receivership
- the expected outcome, for example will the organisation be saved, sold or will investors be sought
- if repaying debts, how are you repaying the debt and what is the date the debt will be cleared
- if the debt refers to a person, include their full names
- any actions you have undertaken to mitigate damage to ESFA, public funds or the apprenticeship service and apprentices

Section 5 – Your subcontractors financial health

This section is to ensure your subcontractors finances and ability to meet ongoing financial commitments. Details on how a financial health grade is calculated is set out in ESFA's financial health policy.

If you answered A: Upload your subcontractors' financial evidence

You must upload the most recent set of financial evidence. All Agency assessments of independent Training Providers are by design formulaic to ensure that each submission undergoes the same robust analysis and examines 3 common ratios (Profit after Tax, Current Ratio and Gearing, which is an analysis of debt). The information required and the format of that information is contained in our ESFA financial health assessment guidance.

We will review this information against any previous submissions to ensure consistency and accuracy.

If you answered B: there is no further action to take for financial health

Section 5 – Your subcontractors primary contacts

This section is to provide contact details if we have any questions about your form answers.

What is their business email address?

This must be a business email address. For example, firstname.lastname@provider.com. If they are using a non-business email address such as Hotmail or Gmail, this must reflect their organisation's business name as we will use this email to contact them regarding matters concerning their organisation.

Section 6 – your declaration

6.0.1 and 6.0.2: Your submission declaration

You must confirm the accuracy of the information in your submission.

6.0.3: Have all parties named in your submission given consent to the use of their personal information?

It is your responsibility to ensure that you have informed all individuals named on your submission and received consent to the use of their personal data in-line with the [General Data Protection Regulation \(GDPR\)](#)

6.0.6: Do you consider any of the information provided in your submission to be 'commercial in confidence'?

You must also identify if any information included in your submission is deemed 'commercial in confidence' by your organisation.

In the [Freedom of Information Act 2000](#) 'commercial in confidence' means if certain information is revealed it may result in damaging your commercial interests, intellectual property, or trade secrets.

We will not reveal any information marked 'commercial in confidence' without your permission. If we have your permission, the information will be protected through confidentiality agreements with you.

Section 7 – Declaration and signatures

You must check the boxes to confirm you have read and understood the documents linked.

You must sign your form before submitting.

What happens next

Evaluation and feedback

Assessment process

ESFA will begin to assess submissions once downloaded from Document exchange. We expect the submission assessment process to take approximately 12 weeks however this may take longer during busy periods.

Your submission will be reviewed by our team of assessors for:

- due diligence (section 1 to 4)
- financial health (section 5)

Due diligence

We carry out due diligence checks on subcontractors to check their eligibility to receive ESFA funding to deliver education and training.

This includes checks on the legal status of your subcontractor's organisation and their management team, as well as your responses to our declarations for criminal convictions and compliance. To do this we will use information we hold, as well as information held in the public domain. We need to know that your subcontractors do not pose a risk to the learners or to the use of government funding.

Your subcontractor's eligibility may still be successful if they have a criminal record or history of non-compliance.

However, if they do have any convictions, warnings, cautions, community

resolutions, absolute/conditional discharges, admonishments, or charges awaiting trial, we will make our decision according to:

- if the offence presents a risk to the safety of learners
- if the offence presents a risk to the use of government funds
- the actual sentence or disposal given to them for the offence
- how recent the offence was

Financial health

The outcome of our assessment will be one of the financial health grades set out below. We calculate this from the information we ask you to supply.

- outstanding: your subcontractor has robust finances, can fulfil their contractual obligations and will be able to respond to opportunities and adverse circumstances
- good: your subcontractor has sufficiently robust finances, can fulfil their contractual obligations and will be able to respond to most opportunities and adverse circumstances
- satisfactory: your subcontractor has enough resources to fulfil their contractual obligations but have limited capacity to respond to opportunities and adverse circumstances
- inadequate: your subcontractor is in financial difficulty, are likely to require additional financial support and they pose a significant risk in fulfilling your contractual obligations

An “inadequate” grade may fail your subcontractor’s submission.

Clarifications and messages

We may ask for more information to determine the outcome of your subcontractor’s submission.

Generally, this will only be where a small proportion of questions have failed the assessment and the assessors consider that insufficient detail has been provided in the submission. This is known as the clarification process.

Deciding the outcome of your submission

The answers you provide will be reviewed and assessed. If information or documents are insufficient or are not appropriate for the delivery of education and training, then your submission may be determined to be unsuccessful.

Submission outcome

We will let you know the outcome of your subcontractors checks via email with a letter. We will send the letter to the email we used to notify you; you were in scope.

We may share your subcontractor's information with other parts of the DfE to safeguard public funds and minimise risk.

Outcome - Unsuccessful

If your subcontractor is determined to be unsuccessful, we will write to inform you which questions your organisation have been unsuccessful on.

Outcome - Successful

If your subcontractor is successful, we will write to inform you what your next steps are.

Market exit

If a subcontractor does not meet, or continue to meet, the minimum due diligence and financial health checks required, we will write to the lead provider advising that:

- you must suspend the right of the subcontractor to recruit new learners. You must work with your subcontractor to support the transfer of learners to other delivery options chosen by you the lead in consultation with the affected employers and learners
- depending on the circumstances you may be required by ESFA to terminate the subcontract if you have not already done so

We will usually ask you to give 3 months' notice of termination to the subcontractor and ensure they are aware that they'll not be able to take on any new learners during this termination period.

ESFA will engage with the lead provider following the issue of a notice of termination to ensure effective exit of the subcontract, protecting the interests of learners and employers.

ESFA will expect the lead provider to terminate subcontractor agreements immediately if there are no active learners

In exceptional circumstances and only in instances where a provider is actively delivering education and training, ESFA may ask the lead provider to either:

- terminate the subcontractor on more than or less than three months' notice

Or

- issue the subcontractor with notice of a suspension for new recruits instead of terminating the agreement

These exceptional circumstances include but are not limited to:

- the proximity of the planned end dates for the existing learners is such that moving them to alternative provision would cause them significant disadvantage
- the size or complexity of the subcontractor's delivery programme would require additional time to transfer learners to other suitable providers
- a suitable alternative provider is not available due to the niche nature of the provision or delivery location

Where ESFA considers that exceptional circumstances exist it will write to the lead provider to inform them of its decision and the reasons for it.

Make a complaint

If you would like to make a complaint, please refer to [ESFA's complaints procedure](#)

General data protection regulation (GDPR)

See [ESFA Privacy Notice](#) for details about how we collect, use, protect and secure your personal information.



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