



Education
Funding
Agency

Reforms to subcontracting education for learners over 16

Government consultation response

June 2020

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Introduction

The consultation set out ten proposals for reforming the future arrangements for subcontracting of ESFA funded post 16 education and training. The proposals sought to reduce the overall volume of subcontracted delivery across the sector by eliminating provision that is poorly managed and delivered, and provision undertaken for the wrong reasons. It also sought to strengthen the ESFA's oversight of subcontracted activity.

The consultation ran from 4 February to 17 March and invited views on each of the ten proposals put forward. In light of the COVID-19 issue responses were accepted to 31 March. Responses were predominantly made online at <https://consult.education.gov.uk/education-and-skills-funding-agency/subcontracting-post-16-education-and-training-with>

The consultation elicited a good response and it was helpful in shaping our approach to understand the range of perspectives that respondents provided. It remains our view that subcontracting represents a greater risk to public funding than provision that is directly delivered and the changes that we will introduce reflect that position. It is our intention to publish more detailed guidance about how we will proceed later this year.

In implementing these changes over the next three years, we will need to be cognisant of plans for the Reform of Further Education and will adapt these proposals as necessary.

The vision

Our overall vision is one where only good, well managed subcontracting occurs and at a significantly lower volume than currently. Where subcontracting does exist, it does so to enable specialist and geographically challenged delivery, meet the needs of employers and to enrich learners' programmes. It must be, however, in a system where we, as a funding body, are confident that we know which organisations are in receipt of that money, on as live a basis as possible, and for what purpose. That data, currently, is not accurate or timely. Declaration plans are markedly different from what is actually delivered and reported in the ILR. Lead providers are accountable to us for those funds and must meet the audit requirements. We will strengthen the audit regime through the introduction of a Standard (further detail about the Standard is set out under Proposal 9 below). Failure to meet the Standard when fully implemented will trigger intervention action with the lead.

To avoid dealing with failure, after the fact, ESFA will require of lead providers better Governance oversight and curriculum planning and richer and more timely data. This will mean that outlier models of delivery are fed into our and Ofsted's risk processes and enable early concerns about financial management and education quality to be reviewed and managed. Until the Standard is fully implemented, we will rely on the funding rules and Grant Funding Agreements and Contracts to implement changes.

Alongside the specific changes set out below, we are asking all providers to review their existing subcontracting activity and take steps to reduce that activity across the next 3 years to 2022/23. Further detail about this requirement is set out at Proposal 3 below. We will apply a cap on the volume of subcontracting and will take forward work this academic year to establish the right threshold for that cap and timescales for a staged reduction.

Summary of responses received

The consultation received a total of 404 online responses. An analysis of the volume of responses by organisational type is set out in table 1 below

Table 1: analysis of respondents

| Respondent type | Number |
|---|--------|
| Academy | 7 |
| Anonymous | 14 |
| Apprenticeships | 19 |
| Assessment Centre | 1 |
| Associations | 4 |
| College | 57 |
| Consultancy Agency | 2 |
| FE recruitment company | 1 |
| Financial consultancy | 1 |
| Fire and Rescue | 1 |
| Independent Training Provider | 192 |
| Independent Training Provider/Subcontractor | 24 |
| Local Authority | 46 |
| Military | 3 |
| NHS Trust | 7 |
| Police | 5 |
| Private individuals | 7 |
| School | 2 |
| Special Post 16 Institution | 1 |
| University | 10 |

Main findings from the consultation

Respondents were constructive and thoughtful in their comments and we are grateful for the level of engagement with this consultation and the help that has provided in shaping our final approach. In general, respondents felt that some of the proposals, particularly where we have suggested obtaining prior agreement from the agency, would be excessively bureaucratic, both for providers and the agency. Many have pointed out where some of the proposals may be suitable for some funding streams but not for others.

We have reflected upon the responses and have made changes to our final approach taking account of the views expressed. We have, in some cases, decided to differentiate our approach by funding stream and to take account of particular structures/modes of

delivery. Overall, we have tried to eliminate proposals that would be excessively bureaucratic and will build more of our oversight and assurance into the development of the Standard for the Management of Subcontracting (proposal 9). We will develop the Standard through 2020/21, it will be trialled in 2021/22 and in 2022/23 it will be implemented in full and externally validated by audit firms.

There was broad support for six of the proposals, and four where most respondents disagreed or strongly disagreed. An analysis of the responses is set out in detail below.

Timing of implementation

Many respondents felt that our proposal to introduce the reforms as quickly as possible was not the right approach and that we should proceed at a steadier pace. These views and the impact of the coronavirus outbreak have led us to conclude that a more measured pace of change is the correct approach. The timescale for the introduction of each reform is set out in this response document. While we work these changes through, we will also be undertaking a number of activities in support of reform in this area, including: strengthening the clauses in our contracts and grant funding agreements; undertaking preliminary internal work to scope out the new Standard for the management of subcontracting; improving our own risk assessment processes, making better and quicker use of improved and more timely data; identifying and following up where we identify providers that are 'outliers'; and embedding all these activities into our business cycle. In addition, we will work with a group of providers to test the practical implications of introducing our reforms to ensure that we get them right.

The consultation raised several other issues that were not framed by a specific proposal but are nonetheless issues we want to address:

Use of brokers

By brokers we mean where a third-party match, for a fee, a provider with an unused allocation with a provider that can secure enrolments of learners to utilise it. It was clear in feedback received that this is an issue that many respondents feel strongly about and believe that such practice is not to the benefit of students or an appropriate way to use public funding. We agree. Fees to brokers take funding away from front line delivery. We expect providers to have planned their provision and curriculum well enough to avoid such practice. Lead providers should be selecting subcontractors fairly through a clear competitive or procurement policy. We will strengthen our levers to act and do so where we find cases of provision being subject to brokerage. We will strengthen clauses within our grant funding agreements and contracts to make the use of brokers with ESFA funds a serious breach of the agreements.

Language and terminology

Another concern expressed was the use of language and terminology as a means to circumvent the application of requirements or to inflate fees and charges. By subcontracting we mean any delivery to a learner's programme of learning by a third party. It does not matter if this is by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service. If that delivery contributes in any way to the learner's programme of study and is delivered by someone or an organisation not directly under the control of the lead provider then we consider that to be subcontracted delivery.

For the avoidance of doubt, subcontracting provision funded through the advanced learner loans scheme is not permitted in any circumstances. This remains the case and was not in scope of this consultation process.

Analysis of responses to the ten proposals

Proposal 1

To what extent do you agree or disagree with the proposal to introduce a reason for subcontracting that is approved by the Governors or Board, and published on the lead's website?

We said: providers should be clear about the educational rationale for their subcontracting position, this should be signed off by governors and boards, and that it should be published on their website, alongside their management fee structure, and a list of their subcontracting partners. We expect the rationale to meet one or more of the following aims:

- enhance the opportunities available to young people and adults
- fill gaps in niche or expert provision, or provide better access to training facilities
- support better geographical access for learners
- offer an entry point for disadvantaged groups.

Response:

| Option | Total Responses | Percent |
|----------------------------|-----------------|---------|
| Strongly agree | 138 | 34.16 |
| Agree | 194 | 48.20 |
| Neither agree nor disagree | 37 | 9.16 |
| Disagree | 23 | 5.69 |
| Strongly Disagree | 10 | 2.48 |
| Don't know | 2 | 0.50 |

There was strong support for this proposal on the grounds of transparency and ensuring governing body or Board oversight.

Agency response

The Agency will introduce this proposal with effect from 2020/21.

Taking account of concerns raised by some respondents in respect of the impact of the proposals on those who share protected characteristics, we will extend the permitted rationale to include consideration of the impact on individuals who share protected characteristics, and in particular where alternative provision may not be available to them or meet their particular needs.

We will expect Boards and Trusts to discuss their plans and rationale for subcontracting and be satisfied that it fits with the overall objectives and curriculum strategy. We will not prescribe how this is carried out, but we may ask for evidence of those discussions. We intend to supply guidance for Governors and Boards on their role in setting the subcontracting strategy and how that differs to the role of individuals running the provider on a day-to-day basis.

In publishing this information, we expect it to be easy to navigate to from the front page of the organisation's education and training web pages. We expect this information to be published by 31st October 2020. For subsequent years, we will require this rationale to be reviewed and discussed annually and publication refreshed prior to the start of each academic year.

Proposal 2

To what extent do you agree or disagree with the proposal to introduce stronger criteria including prior approval for distance subcontracting?

We said: we should introduce stronger criteria for subcontracted provision delivered at a distance and that providers will be required to submit cases where they wish to do so. Existing distance subcontracting should also be subject to ESFA scrutiny in 2020/21.

Response

| Option | Total Responses | Percent |
|----------------------------|-----------------|---------|
| Strongly agree | 74 | 18.32 |
| Agree | 96 | 23.76 |
| Neither agree nor disagree | 36 | 8.91 |
| Disagree | 87 | 21.53 |
| Strongly Disagree | 110 | 27.23 |
| Don't know | 1 | 0.25 |

This proposal divided opinion. Those in favour of the proposal supported our contention that provision delivered at a distance inherently carried more risk, was harder to manage and oversee effectively, and should only be undertaken for exceptional reasons.

Respondents that disagreed with our proposals did so for a variety of reasons:

- apprenticeships' delivery and national employers – respondents set out how they work with many employers (both Levy and Non-Levy payers) who work on multiples sites, often geographically distant. These companies often want to deal with one provider who has oversight and responsibility for all delivery in their business, and who work with a single subcontractor for delivery across multiple sites regionally or nationally
- geography means that some distance arrangements are necessary and should be permitted (particularly the rural south west) – the proposals would have negative impact for remote learners and providers and small specialist and niche providers
- the proposal that provision should be considered to be at a distance if the travel time from the directly funded provider to the place of learning was in excess of one hour by car was not considered to be an effective definition. Many in remoter parts of the country advocated a longer travel time
- IT and online learning make distance irrelevant in some circumstances
- introducing a system requiring providers to make cases to the ESFA was considered time consuming and excessively bureaucratic
- the proposal was potentially damaging to bespoke schemes such as the Diploma in Sporting Excellence.

Agency response

The agency recognises defining distance in a way that is universally fair is problematic, and introducing restrictions based on distance has different implications according to geography, variable travel infrastructure and provision type. We recognise that for some apprenticeship provision, distance arrangements are an integral part of the delivery model. We do believe, however, that such arrangements are higher risk, because of the obstacles in maintaining appropriate levels of oversight at a geographical distance.

We will apply a differentiated approach in taking forward this proposal. Effective from 2021/22, we will require prior approval for geographically distant 16-18 study programme provision. We expect 16-18 provision delivered at distance to be rare but recognise there will be some limited circumstances where it is acceptable, for example, the delivery of the Diploma in Sporting Excellence. Providers will be required to seek approval **where the delivery location is outside the lead provider's normal recruitment area**. We will not require prior approval for other funding streams delivering at geographic distance.

Further detail on the prior approval process and transition to it will be set out in our Autumn update.

All provision delivered at a distance will be a focus of the audit process and the Standard for the management of subcontracting (see proposal 9 below). Providers will be required to demonstrate that their level of management and oversight is proactive, well thought through and not compromised by distance considerations. For all subcontracted provision, providers will be expected to hold auditable evidence of the staff who are accountable for oversight, visits made to the site of delivery and the checks and activities undertaken during the visits, and demonstrate the reporting arrangements to senior management and governors. We would not expect the frequency of quality assurance visits to be lower where the provision is at a distance.

Proposal 3

To what extent do you agree or disagree with the proposal to introduce volume controls on the value of provision that can be subcontracted?

We said: we should limit the volume of provision that a provider may subcontract and reduce that volume across 3 years – 25% in 2021/22, 17.5% in 2022/23 and 10% in 2023/24.

Response

| Option | Total Responses | Percent |
|----------------------------|-----------------|---------|
| Strongly agree | 57 | 14.11 |
| Agree | 51 | 12.62 |
| Neither agree nor disagree | 57 | 14.11 |
| Disagree | 83 | 20.54 |
| Strongly Disagree | 151 | 37.38 |
| Don't know | 5 | 1.24 |

The majority of respondents disagreed with this proposal:

- the reduction to 10% was considered to be too low – 25% seemed a reasonable limit
- subcontractors will be put out of business as a result and it could result in underspending by lead providers
- it would raise issues for Local Authorities that act as a commissioner for community-based provision that they would not have the infrastructure or staff to deliver themselves
- some negative implications for effective consortia working, and 'not for profit' structures where a single body manages the administrative functions for a number of training providers to provide economies of scale thereby maximising the amount of funding reaching frontline delivery
- It was unclear if the limit would apply to the volume of learners or the value of the provision. This is a key distinction because of the very variable nature of the amount of funding attached to each learner – for example, in Apprenticeships the value of different frameworks differ greatly, and the difference in the funding attached to a learner on a short AEB funded course compared with a 16-18 year-old following a full time 2 year study programme.

Agency response

We recognise that delivery models and funding streams are varied, and the introduction of a 25% cap (by either £ value of provision or learner volume) would have a different impact according to the type of provision offered.

We expect all providers to recognise that the overarching aim of these reforms is to significantly reduce the volume of subcontracted activity across the sector. In order to achieve that, we expect all directly funded providers to review their current levels of subcontracted activity (2019/20) and to take steps to reduce the overall volume over the next 3 years through to 2022/23.

We will apply a cap on the volume of subcontracting and will take forward work this academic year to establish the right threshold for that cap and timescales for a staged reduction.

We require all providers to produce a plan during the 2020 Autumn term setting out how they will achieve a reduction across this period. The ESFA will undertake a random sampling exercise of plans early in the 2021 calendar year. We will use the sample to assist us in our assessment of the scale and pace of reduction of subcontracted activity across the sector.

In constructing their plan, providers should review their existing (2019/20) subcontracted activity and assess the extent to which that provision is in line with their published rationale as set out in proposal 1. Where it is not in line with that rationale, they should take steps to withdraw from such arrangements at a pace that does not disrupt existing learners' programmes. Providers should consider taking provision in house where they can do so without compromising the quality of that provision and/or without reducing learners' access to provision.

We expect all providers to undertake this exercise irrespective of the current levels of subcontracting, but with the following exceptions where we recognise that the delivery models will limit the ability to make reductions, we do not require a plan:

- ESF provision, which was procured on the basis of a subcontracting model,
- LA provision where LAs commission subcontractors to deliver a community-based model, in recognition of their commissioning role

Other providers which do not believe that they can make a planned reduction should set out their reasons for this and submit their case to the agency by 31st December 2020.

Those providers that already have low volumes of subcontracted provision (which we define as less than 10% of ESFA funded activity across all funding streams) should use their plan to consistently challenge themselves and ensure that their subcontracting is in line with their published rationale, and where it is not take steps to discontinue it.

We expect providers to review their plan annually, alongside a review of their published rationale for subcontracting.

We will, through the data available to us, identify those leads with high value/volume subcontracting and require them to explain and evidence the actions that they are taking to reduce the volumes of subcontracted activity. We will identify models of delivery with large volumes of subcontracted activity and assess the risk to public funds or learners of such models.

Where we have concerns, we may use step in funding clauses to require the lead to reduce the volume subcontracted out. Internally we may also build in the risk posed by high volume subcontracting to our financial assessments. For the longer term, in cases where we identify high volumes of subcontracted provision, the Standard once developed, will address questions such as those set out below and assess the risks:

- Does the extensive use of subcontractors represent additional financial risk?

- Does the extensive use of subcontractors have an impact on the quality of the provision?
- How well does the directly funded provider manage and oversee subcontractors?
- Does the model align with the stated rationale of the directly funded provider?
- How much ‘churn’ is there in the subcontractors that are engaged and what are the reasons for that churn?
- Is the directly funded provider effectively acting as a broker or is it adding value?
- What efforts has the directly funded provider taken to reduce the overall volume of subcontracted activity?

Proposal 4

To what extent do you agree or disagree with the proposal to require prior agreement from ESFA before entering into whole programme subcontracting arrangements?

We said: from 2021/22 we would introduce stricter controls on the circumstances in which the whole of a learner’s programme could be subcontracted, and providers will be required to obtain agreement from the ESFA before doing so.

Response

| Option | Total Responses | Percent |
|----------------------------|-----------------|---------|
| Strongly agree | 61 | 15.10 |
| Agree | 60 | 14.85 |
| Neither agree nor disagree | 65 | 16.09 |
| Disagree | 93 | 23.02 |
| Strongly Disagree | 118 | 29.21 |
| Don’t know | 7 | 1.73 |

The majority of respondents disagreed with this proposed restriction and the main issues raised were:

- it could be potentially confusing for a learner working with 2 training providers - it can fragment their programme and have a negative impact upon attendance
- administering a ‘by agreement’ process for this would be too bureaucratic for both providers and the agency.
- requiring the directly funded provider to deliver part of the programme would not be suitable for short programmes (e.g. short AEB)
- requiring attendance at the directly funded provider could be problematic for students where the subcontractor delivers at a remote location

- it could restrict the flexibility of the skills delivery system to meet the needs of learners or employers in a timely fashion and introduce new barriers thus restricting the ability to make an impact
- constraints on whole programme subcontracting already apply for Apprenticeship provision.

Agency response

By whole programme subcontracting we mean where every element of each individual learner's programme is delivered by the subcontractor.

We will introduce the requirement for prior agreement for all 16-18 and AEB programmes that exceed a specified guided learning hours (glh) duration, effective from 2021/22. Programmes below the glh threshold will not require prior agreement. Later this year we will quantify the glh threshold and will set out the process and timescales for obtaining prior agreement. Apprenticeship delivery already has constraints on whole programme subcontracting, and those requirements will remain unchanged. Schools are restricted in this practice through Regulations in respect of school attendance.

Proposal 5

To what extent do you agree or disagree with the proposal to introduce volume controls on the value of ESFA funds that can be held by a subcontractor?

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

Response

| Option | Total Responses | Percent |
|----------------------------|-----------------|---------|
| Strongly agree | 113 | 27.97 |
| Agree | 178 | 44.06 |
| Neither agree nor disagree | 55 | 13.61 |
| Disagree | 31 | 7.67 |
| Strongly Disagree | 20 | 4.95 |
| Don't know | 7 | 1.73 |

Respondents were very supportive of this proposal, with 72% agreeing or strongly agreeing.

Those that disagreed believe that we should open up the market and allow subcontractors to be directly funded and thereby able to compete on a 'level playing field'. Some respondents feel that the current arrangement unfairly favours directly funded providers.

Most respondents support the proposal to increase regulation/inspection by Ofsted and believe that where a large subcontractor is judged to be good/outstanding there should be no reduction in the volume of provision they can be permitted to deliver.

Agency response

We will take steps to ensure that large subcontractors are monitored and managed more effectively than at present. We will share this information with Ofsted. Ofsted also believe that large subcontractors should be subject to more inspection, via their main (directly funded) provider.

We think leads should be cognisant of the recent totality of a subcontractor's activity before they contract with them as part of their procurement or selection process, keep this under review and consider the implications of that. Evidence that directly funded providers have undertaken such checks as part of their procurement will be tested as part of the Standard.

We will reserve the right to convene a meeting with those directly funded providers that work with a large subcontractor, where we believe the risk to public funding to be too high, to consider what actions we might take jointly to mitigate the risk.

We will monitor cases of rapid growth where a subcontractor is close to exceeding £3m threshold.

Proposal 6

To what extent do you agree or disagree with our proposal to require a direct contractual relationship between a lead provider and a third-party providing specialist input?

We said: that we will require the lead provider to have a direct contractual arrangement with a sports club where one is involved in the arrangement, and that there should be no financial transactions between a subcontractor and a sports club.

Response

| Option | Total Responses | Percent |
|----------------------------|-----------------|---------|
| Strongly agree | 90 | 22.28 |
| Agree | 105 | 25.99 |
| Neither agree nor disagree | 109 | 26.98 |
| Disagree | 14 | 3.47 |
| Strongly Disagree | 9 | 2.23 |
| Don't know | 77 | 19.06 |

This proposal addressed a specific issue that only affected some respondents, and this is reflected in the higher number of neutral responses ('neither agree nor disagree' or 'don't know') than the other proposals. Those that did have a view were mostly supportive of this proposal.

Respondents agreed that financial relationships need to be between the lead provider and the specialist e.g. a sports club.

Respondents observed that there have been several cases of suspected second tier subcontracting and a blurred line between reasonable costs for facilities and the more common practice of putting a value per student recruited onto a programme.

There needs to be greater clarity on what can or cannot be funded as part of a study programme. Sports coaching activity is often placed within the study programme content. Awarding bodies need to provide guidance if this is appropriate.

Agency response

We will make this direct relationship between the specialist and the lead a requirement in 2021/22. In the meantime, we will work with affected providers, the AoC, representative sports bodies and others in scope, in working through the practicalities of introducing this requirement. We will set out our expectations that directly funded providers assure themselves that facilities are safe, suitable and fit for purpose, that safeguarding arrangements are robust and that parties are clear on the dividing line between teaching hours and coaching activities (i.e. what is suitable to be supported with ESFA funding (teaching) and what is not (coaching)).

Proposal 7

To what extent do you agree that we should introduce one set of funding rules for subcontracting?

We said: we should have one set of common funding rules across the different funding streams

Response

| Option | Total Responses | Percent |
|----------------------------|-----------------|---------|
| Strongly agree | 147 | 36.39 |
| Agree | 144 | 35.64 |
| Neither agree nor disagree | 57 | 14.11 |
| Disagree | 34 | 8.42 |
| Strongly Disagree | 15 | 3.71 |
| Don't know | 7 | 1.73 |

There is strong support for this proposal (72%). Most respondents feel that the current multiple sets of rules make compliance more difficult. The majority would welcome a single and simpler set of rules, and some training materials.

Some respondents pointed out that some differences in the rules according to funding stream were reasonable and we should not sacrifice particular requirements for the sake of simplicity alone.

Respondents observed that the current rulebooks are complicated. Money spent by providers in complying with the rules is money they do not spend on education and training. Where a rule is necessary to protect public funds or ensure minimum quality, that is not a problem but ESFA should ensure that its activities do not create unnecessary costs.

Agency response

The Agency will seek greater alignment of the rules and in 2021/22 we will publish a single subcontracting reference guide that will contain the rules that apply across all provision types, and annexes by funding stream where particular rules apply. Where we can, we will seek to simplify and reduce the number of rules.

Proposal 8

To what extent do you agree or disagree with the proposal to extend the requirement to publish information about funding retained for all subcontracted provision, and for ESFA to also publish this information annually?

We said: we should extend the requirement to publish information about fees retained to include 16-19 provision, and we do not expect that figure to exceed 20%.

Response

| Option | Total Responses | Percent |
|----------------------------|-----------------|---------|
| Strongly agree | 131 | 32.43 |
| Agree | 151 | 37.38 |
| Neither agree nor disagree | 61 | 15.10 |
| Disagree | 35 | 8.66 |
| Strongly Disagree | 18 | 4.46 |
| Don't know | 8 | 1.98 |

There is strong support for this proposal (70%).

Some respondents believe that requiring the fees retained to be published to be bureaucratic, others welcomed the transparency.

In some responses there seems to be some disagreement about how this would/should be calculated.

Views differed on the maximum that should reasonably be retained - this ranged from 15% to 25%.

Some subcontractors who responded valued the support and expertise that their directly funded provider gave to them and did not think that the level of funding retained was a matter of concern. Others felt that they were forced into accepting poor deals with excessive funding retained and welcomed the 20% figure as a reasonable guide as to the maximum.

Agency response

The agency will extend the requirement for providers to publish information about fees and charges retained to include 16-18 provision in 2021/22. We will expect providers to set out the full range of fees retained and charges that they apply including:

- funding retained for quality assurance and oversight

- funding retained for administrative functions such as data returns
- funding retained for mandatory training delivered to subcontractor staff by the directly funded provider
- clawback for under delivery or for other reasons.

We will reserve the right to challenge and potentially act with providers where we learn of cases where the funding retained exceeds 20% and offers little value.

Proposal 9

To what extent do you agree or disagree with the proposal to introduce an externally assessed standard for management of subcontracting?

We said: we are considering introducing an externally assessed standard for subcontracting which would effectively act as a license to practice once introduced.

Response

| Option | Total Responses | Percent |
|----------------------------|-----------------|---------|
| Strongly agree | 79 | 19.55 |
| Agree | 139 | 34.41 |
| Neither agree nor disagree | 66 | 16.34 |
| Disagree | 73 | 18.07 |
| Strongly Disagree | 43 | 10.64 |
| Don't know | 4 | 0.99 |
| | | |

This proposal had strong support on the basis that it will level up the quality of management and oversight by lead providers. Those against the idea feel it is an additional burden on an already heavily regulated sector and a potential duplication of Ofsted's role.

Agency response

The ESFA will develop a subcontracting Standard for provider subcontracting across all funding streams, together with guidance, as well as the related assurance requirements and guidance, ready for the 2021/22 academic year. The standard and consequent review will be designed by the agency, in consultation with providers and independent review organisations (e.g. accountancy firms). We will use the standard without external validation in 2021/22 to refine and test it and then operate an externally validated standard in 2022/23.

The Standard will be separate from, and different in purpose, to Ofsted's Education Inspection Framework. It will not replace or overlap with Ofsted's remit. The subcontracting Standard is about oversight and management of public funds and ensuring that these are used to best effect to maximise the value of those funds to benefit the learner.

The Standard will include our response to these proposals and set out a clear contract management framework for providers and independent review organisations to follow and will ensure that the ESFA receives assurance as to whether subcontracted provision complies with the ESFA's requirements. In addition to our response to the proposals, this could include obtaining assurance on areas such as:

- Planning & Governance: Preparing for contract management and providing oversight.
- People: Ensuring the right people are in place to carry out the contract management activities.
- Administration: Managing the physical contract and the timetable for making key decisions.
- Managing Relationships: Developing strong internal and external relationships that facilitate delivery.
- Managing Performance: ensuring the service is provided in line with the contract, including obtaining assurance of sub-contract compliance with relevant ESFA funding rules.
- Payment and incentives: Ensuring payments are made to the supplier in line with the contract.
- Risk: Understanding and managing contractual and supplier risk.
- Contract development: Effective handling of changes to the contract; and
- Provider Development: Improving provider performance and capability i.e. Continuous Improvement and value for money.

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

- Inadequate (contract) management of subcontractors.
- Non-compliance with ESFA funding rules by subcontractors; and
- Fraudulent and incorrect funding claims.

Proposal 10

To what extent do you agree or disagree with our proposal to implement changes in 2020/21 where possible.

Response

| Option | Total Responses | Percent |
|----------------------------|-----------------|---------|
| Strongly agree | 51 | 12.62 |
| Agree | 62 | 15.35 |
| Neither agree nor disagree | 51 | 12.62 |
| Disagree | 85 | 21.04 |
| Strongly Disagree | 152 | 37.62 |
| Don't know | 3 | 0.74 |

The majority of respondents were concerned that we were seeking to implement reforms too quickly and cite previous examples of changes made at short notice. Those in support felt that some urgent change was required.

Agency response

We have taken account of the majority view to implement change at a steadier pace than originally planned, and in view of the significant disruption caused by the coronavirus, we have decided to implement change at a more cautious pace to the timescales indicated for each of the proposals set out above. Nonetheless, we do regard these reforms as urgent and intend to start to implementation of some proposals from 2020/21 where such changes do not undermine the sector's capacity to deliver to learners and employers. We believe that the timescales set out for each proposal should allow learners time to complete their programme without disruption and enable lead providers to manage their contractual relationships.

We also recognise that it is providers themselves that will effect the changes that we want, and that is why we are asking that you review your own current subcontracting

activity and take active steps to reduce it now, before we start to make material changes as set out in proposals 1 to 9 above.

Equalities Analysis

Several respondents have raised concerns about the impact on those who share protected characteristics. We believe that the flexibilities and the changes that we have made to the original proposals as set out above should significantly reduce any adverse impact. In particular the additional aim we have added to the permitted rationale for subcontracting under proposal 1 offers an opportunity to take impact into account when deciding whether subcontracting should continue.

For example, in allowing local authorities to continue to act as a commissioner and subcontract all or most of their AEB provision will ensure that community-based provision for learners who share protected characteristics can continue.

Next steps

The Agency will continue its internal work to map out the work required to introduce the reforms set out above. This will include changes to grant funding agreements and contracts, development of better tools for collecting better and more timely data, analysing risk and identifying non-compliance, and setting up a process for providers who wish to make a case to the agency for whole programme subcontracting for 16-19 year-olds.

We will work with external partners and providers in developing the subcontracting Standard as set out above at proposal nine.

Later in this calendar year we will publish an update on the progress we have made and will provide information on the development of the Standard and where relevant about how providers can make cases to us for any exceptions set out above.



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