Education & Skills
Funding Agency

Post-16 Audit Code of Practice 2023 to 2024

Assurance and accountability requirements for post-16 providers, including further education and sixth-form college corporations.

March 2024

Contents

Summary

The Post-16 Audit Code of Practice (the 'Code') sets out a common standard for the provision of assurance in relation to the funding of post-16 providers. It sets out:

- the overarching assurance arrangements for post-16 providers
- the specific responsibilities within the assurance framework for further education and sixth-form college corporations, and their external auditors / reporting accountants
- requirements for independent training providers.

The Code, together with any supplementary bulletins and reclassification bite size guides, should be read alongside any accountability agreement, grant funding agreement or contract setting out conditions of funding issued by the Education and Skills Funding Agency (ESFA), Department for Education (DfE) or any other funder, including the Mayoral Combined Authorities (MCAs) and Greater London Authority (GLA).

Status

For further education and sixth-form colleges[1], this edition has been produced for financial periods commencing on or after 1 August 2023 and the funding year 2023 to 2024. For independent training providers and special post-16 institutions this edition has been produced for the funding year and financial year 2023 to 2024. The provisions of this document apply to the periods stated above, but will remain in force unless updated or replaced.

We have published a series of bite size guides to aid colleges in applying HM Treasury's 'Managing Public Money' (MPM) and other obligations arising from reclassification of the sector.

[1] Including all institutions which are designated under Section 28 of the Further and Higher Education Act 1992. The provisions of this Code, relevant to designated institutions, also apply to any entity funded by ESFA which conducts or controls a designated institution unless that designated institution itself is required to submit accounts to ESFA.

Who is this publication for?

This document is intended for use by the following organisations, and their respective auditors / reporting accountants, whether they are funded directly by ESFA, DfE or by one of the Mayoral Combined Authorities (MCAs) or the Greater London Authority (GLA):

- further education and sixth-form college corporations
- bodies designated as being in the further education sector under section 28 of the Further and Higher Education Act 1992, including those who have a higher education institution as a parent
- independent training providers
- special post-16 institutions
- local authority (LA) controlled adult education centres and LA maintained schools with sixth-forms
- non-maintained special schools

Further education and sixth-form college corporations are entities that operate one or more colleges. They have the legal status of statutory corporations and exempt charities. A college is a charitable activity undertaken by its corporation; it does not have a separate legal entity distinct from that of its corporation.

We use the term “college” to refer to further education and sixth-form college corporations established under the provisions of the Further and Higher Education Act 1992. This means the college or college group when the college corporation is responsible for a group of colleges or other entities, including subsidiaries, within the group accounting boundary of the parent corporation.

Requirements in this guidance for college corporations apply equally to institutions designated under Section 28 of the Further and Higher Education Act 1992 (as amended) as being in the further education sector[2].

Academy trusts with post-16 provision (including any sixth-form colleges which have converted to academy status) are not covered by this publication and should refer to the Academy Trust Handbook and the Academies Accounts Direction. Further education and sixth-form college corporations that are registered with the Office for Students (OfS) are obliged to follow this Code, the College Accounts Direction, the OfS terms and conditions

[2] The provisions of this Code, relevant to designated institutions, also apply to any entity funded by ESFA which conducts or controls a designated institution unless that designated institution itself is required to submit accounts to ESFA.

of funding, and the OfS Accounts Direction as detailed in paragraph 103. Higher education institutions that are part-funded by ESFA and/or DfE should also follow the OfS' requirements.

Purpose

ESFA, DfE, LAs, MCAs and the GLA fund young people's education, apprenticeships and adult skills, and all have a duty to demonstrate that they:

- spend public money in accordance with HM Treasury's guidelines
- have properly discharged any statutory and other legal requirements.

ESFA is an executive agency of the Department for Education and acts as the agent of the Secretary of State. ESFA's accounting officer is accountable to Parliament for how ESFA uses its funds. This Code sets out how ESFA and DfE obtains assurance from providers to meet this duty. It also sets out how MCAs and the GLA obtain assurance over devolved adult education funding from the DfE.

Reclassification

On 29 November 2022, the Office for National Statistics (ONS) announced that Further Education colleges, sixth-form colleges and designated institutions in England ('colleges') were reclassified to the central government sector. This means that colleges and their subsidiary companies must now meet requirements in HM Treasury's 'Managing Public Money' ("MPM"), and other related obligations, as set out in the "Dear Accounting Officer" letter of 29 November 2022, and subsequent ESFA reclassification bite size guides. Colleges and college groups must ensure that their internal controls cover this expanded regularity framework, and that they have updated their existing policies, procedures and scheme of delegation in light of these requirements.

As of March 2024, ESFA had published six bite size guides to aid colleges/college groups in meeting MPM requirements and other obligations arising from reclassification. These bite size guides cover:

- Senior pay controls for colleges
- College requirements for write-offs and losses
- College requirements for special payments, including severance, compensation and ex-gratia payments
- College requirements for indemnities, guarantees and letters of comfort
- College requirements for novel, contentious and repercussive transactions
- College requirements regarding the proceeds of asset disposals.

A new College Financial Handbook (the "handbook") was published in Spring 2024 on Gov.UK to provide further certainty and support to the sector in navigating this changed landscape. The provisions of the handbook are effective from 1 August 2024.

What has changed since the April 2023 edition?

Changes in the 2024 edition include:

- The reference to the COVID supplementary bulletin has been removed from the document as all Covid-19 grants have either stopped or become part of business-as-usual activity.
- The use of the term 'funding agreement' in this framework document has been clarified ("Clarification of terms", page 7). Where appropriate, 'accountability agreement' has now been used throughout the document.
- The text on how DfE obtains assurance from each MCA/GLA has been updated (Table 2, page 9).
- A reference has been included to the report the ESFA published on common findings from funding assurance work on post-16 education providers (Part 1, Paragraph 13).
- ESFA's accounts submission requirements have been added to the guidance (Paragraph 115).

Further update: audited Annex G returns

With effect from 1 April 2024 onwards, DfE will no longer require that colleges complete and submit an audited Annex G return in respect of discrete areas of DfE funding. Instead, these returns will be required only when requested by DfE and as the result of risk analysis. Going forward, DfE will obtain assurance over the regularity of such grant funding through the accounting officer's statement of regularity, propriety and compliance and the reporting accountant's report on regularity along with compliance checks of evidence submitted with grant claim forms.

Clarification of terms

We use the terms 'must' and 'should' in this document:

- must – means a requirement
- should – identifies minimum good practice for which there is no requirement, but which should be applied unless an alternative better suits the circumstances

Funding agreement – for the purposes of this framework document, where we use the term ESFA or DfE ‘funding agreement’ in a generic sense, or in the specific context of colleges and local authorities, this also includes college and local authority accountability agreements.

Further information and feedback

Corporations and their auditors can ask ESFA questions via an on-line Customer Help Portal. Questions about devolved adult education funding should be directed to the relevant MCA or the GLA.

We are grateful to the individuals and organisations that have made suggestions or observations about this document.

Part 1: Assurance arrangements for post-16 providers

1. ESFA and DfE requires assurance over aspects of provider activity. The assurance requirements depend upon the provider type and the nature of the relationship between the provider and ESFA/DfE. In all cases, ESFA and DfE will require assurance that a provider has established entitlement to its funds by delivering learning in accordance with the terms of their funding agreement or contract ("use of funds"). ESFA and DfE's assurance requirements cover more than use of funds for certain types of provider – see table 1.

Table 1: Assurance requirements

Area	Underlying requirements
Use of funds	Income is only receivable where the provider has established entitlement to funding in accordance with the underlying conditions of funding.
Internal control	The system of internal control is designed and implemented to deliver the provider's objectives and ensure compliance with statutory and contractual requirements.
Regularity	Expenditure is incurred and income received in accordance with relevant legislation, delegated authority, conditions of funding and other ESFA and / or DfE requirements. This includes spending money for the purposes intended by Parliament and/or other funders*.
Propriety	Adherence to standards of conduct, behaviour and corporate governance[3], including fairness, integrity, the avoidance of private gain from public business, even-handedness in the appointment of staff, open competition in the letting of contracts and avoidance of waste.
Accounting requirements	Adequate financial records are maintained, and annual accounts / financial statements produced are in accordance with accounting requirements.

* For colleges, their regularity framework has, since 29 November 2022, included requirements of "Managing Public Money", as explained in the "Dear Accounting Officer" letter of that date and ESFA's bite size guides.

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[3] The Seven Principles of Public Life provide further guidance.

2. In cases where ESFA or DfE has a direct funding agreement or contractual relationship with providers, it will obtain its necessary assurance directly as follows:

Table 2: Assurance obtained by ESFA and DfE

<table>
<tr><th>Provider type</th><th>Area of assurance</th><th>Assurance process</th></tr>
<tr><td>Further education and sixth-form college corporations</td><td>Funds claimed; use of funds; internal control; regularity; propriety; compliance with financial accounting and reporting requirements.</td><td rowspan="3">ESFA and DfE’s assurance processes are dependent on provider type, and include:
• For colleges, using the work of others, through the audited annual report and accounts:
  o accounting officer’s regularity compliance statement
  o board’s statement on corporate governance and internal control
  o audit opinion on the annual accounts
  o assurance report on regularity
  o annual report of the audit committee
• monitoring and validation of data submitted by providers
• funding assurance reviews
• targeted work on identified concerns
• financial health assessments.

DfE will obtain from each MCA/GLA an annual statement setting out the assurances it has obtained over the providers detailed in the statement. MCAs/GLA will also obtain assurance from the Department for Education through the sharing of relevant findings from ESFA’s programme of funding assurance reviews in respect of devolved adult education funding[4].</td></tr>
<tr><td>Independent training providers including any providers of adult education jointly funded by ESFA and an MCA/GLA</td><td rowspan="2">Funds claimed; use of funds.</td></tr>
<tr><td>Special post-16 institutions</td></tr>
</table>

[4] The exchange of assurance statements and funding assurance findings will cover assurance over non-ringfenced AEB. Additional requirements may be put in place in respect of AEB ringfenced for the purposes of the National Skills Fund.

3. Reflecting the Secretary of State for Education's role as principal charitable regulator, part 2 of this document sets out the assurance framework for further education and sixth-form college corporations. Part 3 sets out the assurance framework for external auditors / reporting accountants of those institutions.

4. ESFA and DfE contracts with independent training providers (ITPs) and special post-16 institutions (SPIs) to deliver education and training services. ITPs include a range of legal entities, most of which are subject to regulation under the Companies Act 2006 and/or the Charities Act 2011. Special post-16 institutions (SPIs) educate young people with complex special educational needs. SPIs do not have a distinctive definition in law.

5. Contracts for ITPs and SPIs set out in detail the requirements placed on them for service delivery. It is the responsibility of each provider or institution to comply with relevant legislation reflecting their underlying legal status (for example, company, partnership or charity). Part 4 of this document sets out certain financial reporting and audit requirements which must be followed by ITPs. ESFA, DfE, and/or the MCA/GLA's relationship with ITPs and SPIs is contractual not regulatory and this is reflected in the assurance arrangements.

6. Table 3 sets out how ESFA and DfE obtains assurance indirectly on providers, through the work of OfS, LAs, MCAs and GLA.

Table 3: Assurance obtained by OfS, LAs, MCAs and GLA and provided to ESFA and DfE

<table>
<tr><th>Provider type</th><th>Area of assurance</th><th>Assurance process</th></tr>
<tr><td>LA adult education centres and maintained schools with sixth-forms</td><td>Use of funds; internal control; regularity and propriety; compliance with financial accounting and reporting requirements</td><td rowspan="2">LAs are responsible for their own assurance processes, which may include:
• compliance with internal management frameworks and financial regulations
• using the work of internal/external auditors
• review of schools' financial value standard and assurance forms
• ensuring compliance with ESFA and DfE's funding rules and that the data they submit to ESFA and DfE is reliable.

ESFA and DfE also obtain assurance over funding through their LA assurance programme, including reviews of internal and external auditors' reports, audit committee and schools forum minutes.</td></tr>
<tr><td>Non-maintained special schools</td><td>Use of funds</td></tr>
</table>

Provider type	Area of assurance	Assurance process
Adult education providers funded by an MCA or the GLA	Funds claimed; use of funds; internal control; regularity and propriety; compliance with financial accounting and reporting requirements	The Memorandum of Understanding between ESFA and the MCA/GLA specifies that the MCAs and the GLA are responsible for their own assurance on use of funds. However, this may also include assurances gained from work performed by ESFA, DfE, or other external bodies which are provided to the MCA/GLA including: • audit opinion on the annual accounts • assurance report on regularity • statement of corporate governance and internal control • annual report of the audit committee • data returns by the provider to the MCA/GLA • ESFA funding assurance reviews • investigative work on identified concerns. • financial health assessments on both colleges and ITP's • contract management and compliance activity. Each year there will be an exchange of assurance letters between the MCA/GLA and the Department for Education (DfE). The letter will contain a statement as to how the funding body assures the funding detailed in the statement.
Higher education institutions	Funds claimed; use of funds; compliance with financial accounting and reporting requirements.	Assurance is provided to ESFA and DfE by the Office for Students currently on an annual basis through the exchange of letters. ESFA and DfE also obtain assurance over their funding by means of a programme of funding assurance reviews conducted on a sample basis.

7. There are a small number of specific arrangements, including:

- ESFA and DfE obtains assurance over funding from the European Social Fund and MCAs/GLA in respect of adult education funding
- LAs obtain assurance over all three elements of high needs funding.

Funding monitoring and audits

8. Providers receive funding under grant funding agreements and other types of contracts with ESFA and DfE. These agreements and contracts require providers to comply with ESFA and DfE's funding rules, maintain individualised learner records (ILRs) and submit ILR data returns to ESFA in support of their funding claims. They also provide for ESFA and DfE to conduct funding assurance and other ad hoc reviews.

9. ESFA and DfE obtain direct assurance over providers' funding grants through individualised learner record (ILR) data returns. ESFA conducts a programme of funding monitoring and data validation, which involves data analysis and the identification of providers' ILR data anomalies. ESFA informs providers of the ILR data anomalies and explains how to correct any errors.

10. ESFA and DfE also obtain direct assurance through a programme of funding assurance reviews ("funding audits"), based on a random and risk-based sample of providers, which provides sector-wide assurance over funding claimed and under which ESFA and DfE will recover any overclaimed funding. In particular, the random sample facilitates the estimation of funding errors in respect of post-16 funding recognised in ESFA's annual accounts. In addition to the direct assurance performed by ESFA or DfE, MCAs/GLA will adopt their own processes for any additional assurance and/or validation checks relating to specific contracting requirements and local flexibilities agreed as part of devolution.

11. Providers may subcontract the delivery of ESFA and DfE funded learning, provided they comply with the subcontracting requirements, set out in ESFA and DfE's funding rules. Providers are required to comply with the funding agreement subcontracting assurance clause. This clause requires certain lead providers to obtain an independent report that provides assurance on the arrangements to manage and control their subcontractors. Each assurance report should be considered by the provider's audit committee, or equivalent, and reflected in the appropriate minutes. Assurance requirements about subcontracting are published separately in ESFA's publication 'Assurance Reviews of the subcontracting standard for post-16 providers'. Providers and reporting accountants appointed to perform the reviews should familiarise themselves with the publication.

12. Providers that receive devolved adult education funding should note that MCAs and the GLA will have their own subcontracting assurance requirements. Providers should refer to guidance published by the relevant MCA/GLA.

13. In October 2023, ESFA published a report based on the assurance reviews it carried out in respect of funding claims for the year 2021 to 2022. This was to raise awareness of common post-16 funding rules' compliance issues and to help education providers ensure and/or improve their compliance and submit complete and accurate post-16 funding claims.

Part 2: Assurance framework: requirements for further education and sixth-form college corporations

Responsibilities

14. The source responsibilities of further education and sixth-form college corporations and governors stem from:

- education legislation, including the Further and Higher Education Act 1992 (as amended) and the Apprenticeships, Skills, Children and Learning Act 2009 (as amended)
- charity law (as applicable to exempt charities)

15. General responsibilities of corporations are set out in their instrument and articles of government, and conditions of funding are set out in accountability agreements, grant funding agreements and contracts with ESFA and DfE. Further responsibilities are set out within:

- College Accounts Direction
- specific terms and conditions from all other sources of funding
- From 29 November 2022, HM Treasury's 'Managing Public Money' and other obligations arising from reclassification of the sector to central government, as set out in the "Dear Accounting Officer" letter of that date and ESFA's bite size guides.

16. Corporations should be familiar with these documents and their requirements. A good source of advice on the legal and regulatory framework applying to corporations is the Department for Education's governance guide.

17. The instrument and articles of government complement the duties of governors as charity trustees. Under Sections 22 and 33L of the Further and Higher Education Act 1992 (as amended) corporations may change their articles, although any change is subject to the limitations set out in the Act and charity law.

18. The articles set out the corporation's responsibilities, which must include the effective and efficient use of resources, its solvency[5], and the safeguarding of its assets.

[5] Corporations should be mindful of the insolvency regime for further education bodies.

The articles must prohibit the corporation from making changes to the articles that would result in the body ceasing to be a charity.

19. The board of any designated institution that has the legal character of a limited company must consider the additional statutory obligations set out in the [Companies Act 2006] (as amended) and other company law and regulation, including the duties of governors as company directors, which will exist in addition to their duties as charitable trustees and under the accountability agreement and the legal and regularity framework for colleges.

20. The reclassification of the statutory FE sector[6] in England into central government places new responsibilities on colleges, including that any transactions entered into by the college are within the delegated authorities set out in the "Dear Accounting Officer" letter of 29 November 2022 and ESFA's bite size guides, and that prior approval has been sought and obtained for any transactions beyond those delegated authorities.

Accountability agreements, grant funding agreements and contracts

21. Corporations receive funding under accountability agreements, grant funding agreements and contracts with ESFA and DfE. These set out in detail the requirements placed on, and responsibilities of, corporations, and that any mandatory requirements of this Code form a condition of funding. For a complete picture of ESFA and DfE's assurance requirements, the Code should be read alongside ESFA and DfE's accountability agreements, grant funding agreements and contracts. Some corporations also receive funding under grant funding agreements and contracts with MCAs or the GLA in respect of devolved adult education funding, which also require compliance with this Code.

Corporation's audit committee

22. It is a condition of funding and this Code that corporations must establish an audit committee. For the avoidance of doubt, colleges that are subsidiaries of higher education institutions (HEIs) must have their own audit committee, separate to that of its parent.

23. The audit committee must advise the corporation on the adequacy and effectiveness of the corporation's assurance framework. The audit committee must play a

[6] Further Education colleges, sixth form colleges and designated institutions established or designated under the provisions of the Further and Higher Education Act 1992.

robust role in good stewardship and risk management and should refer to ESFA's guidance on the scope of work of audit committees and internal auditors in college corporations. In addition, the audit committee advises and supports the corporation in explaining, in its annual accounts, the measures taken to ensure it has fulfilled its statutory and regulatory responsibilities. The College Accounts Direction sets out ESFA's specific requirements, including the required information to be included in the corporation's statement of corporate governance and internal control.

24. The corporation must set out terms of reference for the audit committee. These should reflect accepted good practice for the audit committees of publicly funded organisations[7] and as a minimum must set out:

- the committee's right to scrutinise any activity within its terms of reference, which may involve engaging a third party to assist
- the committee's right to access all the information and explanations it considers necessary, from whatever source, to fulfil its remit
- a requirement for the corporation to appoint a minimum membership of three, a majority of whom must be governors, which must not include the chair of the corporation or principal
- a responsibility for the corporation, in appointing members, to maintain the committee's independence and objectivity[8]
- a restriction on the committee not to adopt an executive role.

25. Audit committees must include individuals with an appropriate mix of skills and experience to allow the committee to discharge its duties effectively. Collectively, members of the committee should have recent, relevant experience in risk management, finance, and assurance. The abilities of the membership of the audit committee should reflect the needs of the corporation and should extend to expertise in all relevant financial and non-financial areas. Audit committees will be most effective when they are staffed by individuals who are prepared to support, challenge, and warn the board of governors.

26. In addition, the audit committee must:

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[7] HM Treasury's audit committee handbook may be a useful reference point.

[8] Corporations should consider whether staff-governor members of an audit committee meet good practice standards of independence and objectivity.

- assess and provide the corporation with an opinion on the adequacy and effectiveness of the corporation's assurance arrangements and framework of governance. This may include the board assurance framework, risk management and control processes for the effective and efficient use of resources, solvency, and the safeguarding of assets.

- consider the development of members and put in place appropriate training to ensure their skills and knowledge are up to date. Where the audit committee identifies a gap in its existing skillset, training and development should be provided to address this in the first instance.

- advise the corporation on the appointment, reappointment, dismissal and remuneration of the external auditor, reporting accountant, internal audit (as applicable) and other assurance providers (as applicable) and establish that all such assurance providers adhere to relevant professional standards.

- inform the corporation of any additional services provided by the external auditor, reporting accountant, internal audit (as applicable) and other assurance providers (as applicable) and explain how independence and objectivity are safeguarded.

- review and consider the reports of the external auditor, reporting accountant, internal audit (as applicable) and other assurance providers (as applicable), and monitor the implementation of recommendations to agreed timescales.

- oversee the corporation's policies on and processes around fraud, irregularity, impropriety and whistleblowing[9], and ensure:

    - the proper, proportionate and independent investigation of all allegations and instances of fraud and irregularity

    - investigation outcomes are reported to the audit committee

    - the external auditor (and internal auditor if applicable) is informed of investigation outcomes and other matters of fraud, irregularity and impropriety, and that appropriate follow-up action has been planned/actioned

[9] Corporations should refer to the whistleblowing requirements set out in their accountability agreements.

  - all significant cases of fraud or suspected fraud, theft, bribery, corruption, irregularity, cybercrime, major weakness or breakdown in the accounting or other control framework are reported to ESFA and other relevant funding authorities, as soon as possible. Please report any actual or suspected cases of significant fraud, including cybercrime, to ESFA via the 'allegations' mailbox at allegations.mailbox@education.gov.uk.

  - risks around fraud have been identified and controls put in place to mitigate them.

- produce an annual report for the corporation, summarising the committee's activities relating to the financial year under review, including:

  - a summary of the work undertaken by the committee during the year

  - the number of the meetings held in the year, and attendance records for each audit committee member

  - any significant issues arising up to the date of preparation of the report

  - any significant matters of internal control included in the reports of audit and assurance providers

  - details of the date of appointment of the external auditors and the remaining term of the contract

  - the committee's view of its own effectiveness and how it has fulfilled its terms of reference

  - the committee's opinion on the adequacy and effectiveness of the corporation's assurance arrangements, assurance over subcontracting, framework of governance, risk management and control processes for the effective and efficient use of resources, solvency, and the safeguarding of assets

The annual report to the corporation must be submitted to the corporation before the statement of corporate governance and internal control in the annual accounts is signed.

27. Audit committees should take a holistic view with all aspects and systems, financial and non-financial, being in scope depending on their impact and effect on the corporation. In addition to the mandatory responsibilities of an audit committee outlined above, as best practice audit committees may also oversee additional matters such as data breaches, GDPR issues and health and safety incidents.

28. The audit committee should meet at least three times a year. Where three meetings are not held, an explanation (such as when it was not possible to achieve a quorum) must be provided within the audit committee's annual report.

29. The corporation does not routinely need to notify ESFA of a change in auditor at the expiry of their agreed term in office. However, the audit committee must notify ESFA immediately of the resignation of external auditors mid-term, or in the rare circumstance where the corporation removes the external auditors, before the expiry of their term of office. Where auditors have resigned, other than at the end of their agreed term, the audit committee must copy to ESFA an explanation from the auditors. Where the corporation elects to remove the auditors, the audit committee must notify ESFA of these reasons.

30. The audit committee must ensure that there is a policy for regular retendering of the external audit service. The audit committee should consider the quality of the audit service required as well as the price. Corporations should ensure that the external audit contract is put out to tender at least every 5 years, though for the avoidance of doubt this does not necessarily require a different firm of auditors to be appointed.

31. Although corporations are not required to commission internal auditors, having an internal audit service, which may be supplemented by specialists in particular areas, is likely to assist audit committees in ensuring they have effectively discharged the requirements above.

Accountability to Parliament

32. Parliament's interest is that recipients of public funds apply and account for those funds properly and use them economically, efficiently and effectively. The reclassification of the sector to central government from 29 November 2022 confirms that the entirety of a college group's operations (including those of any subsidiaries that a corporation may have) fall within the boundary of parliamentary accountability.

33. The Comptroller and Auditor General (C&AG), as Head of the National Audit Office, is ESFA's external auditor. The C&AG has the right under the Further and Higher Education Act 1992 (as amended) to inspect the annual accounts of any corporation that receives funding, and the right to carry out value for money investigations. The C&AG is selective in its use of inspection rights and where practical will rely on the work of ESFA and DfE's assurance processes.

34. Corporations that are also funded by MCAs or the GLA in respect of adult education should note that these authorities will have their own internal and external auditors. Corporations should refer to their contracts or grant agreements with those authorities to understand the requirements of those authorities concerning audit access.

Responsibilities relating to the accounts

35. Corporations are required to prepare accounts in accordance with ESFA's College Accounts Direction. They are also required to appoint an external auditor to audit those accounts. Corporations must allow the external auditor unrestricted access to all records, information and assets, which the auditor considers necessary to fulfil their responsibilities.

Responsibilities relating to regularity and propriety

36. Regularity and propriety are discussed within HM Treasury's 'Managing Public Money'. MPM sets out that ESFA and DfE's accounting officer has a personal responsibility for safeguarding the public funds for which they are accountable, and for ensuring regularity and propriety in the handling of these funds. There are similar responsibilities attaching to MCAs and the GLA.

37. Corporations receive significant amounts of public funding from ESFA and DfE each year. Some also receive funding from MCAs or the GLA for the provision of devolved adult education. This framework sets out how ESFA and DfE's accounting officers, and their equivalent in the MCAs or GLA, seek to obtain assurance over the regularity and propriety of public funds to satisfy their responsibility.

38. MPM defines regularity as the requirement that 'resource consumption should accord with the relevant legislation, the relevant delegated authority and this document'. For corporations, this encompasses legislation (for example, the Further and Higher Education Act 1992 (as amended) and the Charities Act 2011), but also conditions of funding and other guidance issued by ESFA and DfE. From 29 November 2022, this framework of regularity requirements includes those elements set out in the "Dear Accounting Officer" letter of that date and ESFA's bite size guides.

39. Propriety is a related concept concerned with standards of conduct, behaviour and corporate governance. MPM defines propriety as the requirement that 'patterns of resource consumption should respect Parliament's intentions, conventions and control procedures'.

40. Propriety is less prescriptively defined but includes matters such as fairness, integrity, avoiding the use of public office to achieve private gain, even-handedness in the appointment of staff, open competition in the letting of contracts and avoidance of waste and extravagance. There are no definitive guidelines for propriety – coming to a professional judgement, reflecting the high standard expected in organisations receiving public funding, is required.

Statement of regularity, propriety and compliance

41. Corporations must publish a statement of regularity, propriety and compliance within their annual accounts. The format of this statement is set out in the College Accounts Direction, and requires disclosure of any identified material irregularity, impropriety or funding non-compliance. The Statement of Regularity, Propriety and Compliance must specifically address compliance with the new MPM related and other transactional requirements for colleges/college groups arising from reclassification of the sector from 29 November 2022, as set out in the "Dear Accounting Officer" letter of that date and ESFA's bite size guides. A paragraph has been added to the model statement in the College Accounts Direction referencing the revised framework of authorities as set out in this Post-16 Audit Code of Practice.

42. Corporations should ensure that any references in their final signed statement to instances of material irregularity, impropriety or funding non-compliance are consistent with any findings from the work of the reporting accountant.

43. To form their conclusion the corporation must ensure that it is working within the boundaries of regularity and propriety throughout the college group. This work should be performed throughout the year as part of their oversight of internal control processes, which may include:

- review of management reporting documents
- review of corporation minutes and reports
- confirming compliance with delegated authorities
- confirming appropriate ESFA and/or DfE approvals have been obtained
- exercising effective control to ensure that funds and assets are protected, and legal obligations are met.

44. The following tests may be useful for the corporation to consider when determining whether a transaction is regular and proper:

- is the expenditure in the best interests of the corporation?
- does the expenditure comply with approved procurement rules and policies?
- is there a valid benefit to the corporation from the expenditure and not just personal benefit to an employee or trustee?
- if a transaction could provide a personal benefit to an employee or board member, has this been independently and appropriately authorised?

- is the expenditure necessary?
- is the expenditure reasonable – does it meet identified and agreed needs?
- has the expenditure been properly authorised?
- does the expenditure accord with the delegated authorities set out in the "Dear Accounting Officer" letter of 29 November 2022 and ESFA's bite size guides, and, if not, has the appropriate approval been obtained?

45. The corporation can also draw comfort from the work of the audit committee and internal auditor (if applicable) which provides a process for independent checking of internal control processes to the extent that their review addresses aspects of regularity.

46. It is for the corporation to determine if further work is necessary at year-end to evidence their statement of regularity, propriety and compliance. If proper internal control processes reflecting the current regularity framework have been adequately documented and have operated during the year, there should be no need for significant additional scrutiny.

Regularity self-assessment questionnaire

47. ESFA publishes a regularity self-assessment questionnaire (RSAQ) to provide clarity of the accountability framework, key considerations and the type of evidence corporations may need to provide to their reporting accountant. This must be prepared annually to support corporations in drafting their statement of regularity, propriety and compliance. Corporations must provide a copy of their completed RSAQ to the reporting accountant, signed by the accounting officer and chair of governors.

48. The RSAQ has been expanded so that the corporation is able to properly consider the measures that have been put in place to ensure compliance with the MPM related and other transactional requirements arising from reclassification of the sector to central government with effect from 29 November 2022.

Retaining evidence in support of regularity

49. The corporation must be able to support their statement of regularity, propriety and compliance. This includes responses given in the RSAQ that the corporation completes and discloses to the reporting accountant. Although specific documentation is not prescribed, the accounting officer should retain a record of work undertaken throughout the year. This is to provide support for the sign-off at year-end and to assist with any reporting accountant queries. Where relevant, this should include evidence in relation to any instances where:

- Enquiries were made of ESFA, DfE or others as to whether consent was required before entering into a transaction, and the outcome.

- It would have been necessary to obtain approval for any transactions beyond the delegated financial authorities set out in the “Dear Accounting Officer” letter of 29 November 2022 and ESFA’s bite size guides.

50. Where there is a change of accounting officer during the year, or up to the date of signing the declaration, it is the responsibility of the new accounting officer to be satisfied that they can support their signing of the statement. This will be achieved through discussions between the new accounting officer and the corporation, the internal auditor (if applicable), the senior leadership team and, where possible, the previous accounting officer, who should provide a statement to the corporation on regularity, propriety and compliance covering the reporting period up until their date of departure, alongside all relevant working papers, minutes and reports during the period covered by the statement.

51. ESFA’s College Accounts Direction emphasises that in respect of business combinations, the chair and accounting officer of the receiving entity are responsible for signing off, and submitting to ESFA, audited accounts of any dissolving corporation. Similarly, the receiving corporation’s accounting officer needs to be satisfied that they can support their signing of the statement of regularity, propriety and compliance.

Fraud, regularity, and reporting

52. The legal definition of fraud as defined in the Fraud Act 2006 is: ‘*The making of a false representation or failing to disclose relevant information, or the abuse of position, in order to make a financial gain or misappropriate assets.’*

53. It is the responsibility of the corporation, as set out in accountability agreements, grant funding agreements and contracts with ESFA or DfE (and, where relevant, with MCAs and the GLA), to establish and maintain an adequate system of internal control, to ensure compliance, and to prevent and detect irregularities and suspected fraud (including theft, bribery and corruption). To achieve this a corporation must establish and keep up to date an effective and proportionate counter fraud strategy, which sets out the approach to raising awareness, prevention, detection, investigation and sanction (including seeking redress where appropriate) of suspected fraud.

54. In developing a counter fraud strategy, corporations should consider the nature of the threat faced. The non-exhaustive list below contains the main components, and the anti-fraud checklist at Annex D offers a possible framework:

- a fraud risk assessment to identify areas most vulnerable to suspected fraud; ESFA has developed a list of potential fraud indicators to support a review
- testing of internal control systems to ensure robustness and to help assess vulnerability to fraud
- policies and procedures (such as a whistleblowing policy and a fraud response plan), detailing how to report suspected fraud and the processes to follow when reports are received
- a fraud loss measurement exercise to evaluate the scale of suspected fraud
- a means of measuring the effectiveness of the counter fraud strategy.

55. Corporations must have procedures to ensure any suspected or discovered instance of fraud, cybercrime, theft, bribery, corruption, irregularity, major weakness or breakdown in the accounting or other control framework are identifiable. Where identified, corporations must inform the chair of the audit committee, external auditors and internal auditors (if applicable) as soon as practically possible. ESFA and any other relevant funding provider must also be informed as soon as possible when the fraud, or suspected fraud, is significant. Please contact ESFA via the ‘allegations’ mailbox at allegations.mailbox@education.gov.uk.

56. Significant fraud is usually where there is one or more of the following factors (though this list is not exhaustive):

- the gross amount of the loss (i.e., before any insurance claim) is in excess of £10,000
- there is likely to be public interest because of the nature of the fraud or the people involved
- the particulars of the fraud are novel or complex
- the fraud is systematic or unusual in nature.

57. Fraud, by its inherent nature of deception to result in financial or personal gain, means that the transaction must be irregular and improper. The accounting officer must include any significant fraud in their statement of regularity, propriety and compliance.

58. Fraud, including any suspected or attempted fraud, should be reported to Action Fraud to help identify systematic risks potentially affecting whole sectors (for example cybercrime). Action Fraud monitors the cost of fraud across the UK and has been set up to provide a single point of reporting and information for individuals and organisations.

59. ESFA and DfE reserves the right to conduct investigatory work in respect of any provider when there are reasonable grounds to believe that fraud or other financial irregularity has taken place. If such a provider is also funded by another public authority, then ESFA/DfE and that authority will cooperate to determine which authority will lead the investigation.

Part 3: Assurance framework: requirements for external auditors / reporting accountants of further education and sixth-form college corporations

General responsibilities

60. It is a condition of funding by ESFA, DfE, and MCAs/GLA that corporations appoint an external auditor to audit their annual accounts. ESFA and DfE requires external auditors appointed by corporations to comply with the requirements of Part 42 of the Companies Act 2006, namely a firm or individual holding membership of a relevant supervisory body and allowed to carry out audits under the rules of that body.

61. Corporations must also appoint a reporting accountant to provide an assurance report on regularity each financial year. The reporting accountant must be the same as the external auditor. The external auditor/reporting accountant will adhere to relevant professional standards in performing their work.

62. External auditors will present their findings annually at a meeting of the board of governors, which, at the discretion of the corporation, may be a joint meeting with the audit committee.

63. Corporations should note the Financial Reporting Council's Revised Ethical Standard issued in December 2019, and particularly section 5C, which states that a firm providing external audit may not provide internal audit services to the same client or to a significant affiliate of such a client.

64. In carrying out their work external auditors and reporting accountants will apply the following principles:

- **Integrity and objectivity** – the external auditor and reporting accountant will carry out their work with integrity and objectivity. Auditors will also comply with applicable ethical frameworks, along with any additional requirements set out by relevant regulatory, recognised supervisory and other bodies.

- **Professionalism** – the external auditor and reporting accountant will carry out their work in compliance with standards issued by relevant regulatory bodies.

- **Professional scepticism** - the external auditor and reporting accountant will exercise professional scepticism. This means they will obtain and document the information and explanations they consider necessary to provide sufficient, appropriate evidence to support their judgements, both in relation to their audit of the financial statements and the regularity review. They will meet the requirements of professional standards, where applicable.

- **Proportionality -** the external auditor's work should be risk-based and proportionate. It should be designed to meet the auditor's responsibilities, applying the auditor's professional judgement to tailor their work to the circumstances at the corporation and the audit risks to which they give rise. The auditor should also consider carefully the practical and resource implications for the corporation when framing recommendations arising from their work.

- **Appropriate knowledge and skills –** the external auditor and reporting accountant should ensure that they have the necessary skills and knowledge to discharge their functions effectively and have arrangements to ensure that their staff have sufficient knowledge of the relevant financial reporting, regulatory and legislative frameworks. They will ensure that audit teams comply with statutory and other relevant requirements relating to the security, transfer, holding, disclosure and disposal of information, particularly personal information received or obtained during the course of their work.

Responsibilities relating to the accounts

65. The external auditor must audit the annual accounts in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK).

66. The external auditor must provide an opinion on whether the annual accounts, in all material respects, give a true and fair view and have been prepared in accordance with the Statement of Recommended Practice: Accounting for Further and Higher Education, UK GAAP and the current College Accounts Direction.

67. The external auditor must report by exception whether, in their opinion:

- the corporation has not kept adequate accounting records
- the annual accounts are not in agreement with the accounting records
- if they have not received all information / explanations required for their audit.

68. The external auditor has a professional duty to consider the strategic report and the corporation's statement of corporate governance and internal control. The auditor is required to take appropriate action under auditing standards if the statements made are materially inconsistent with the audited financial statements or any information is

apparently materially misstated based on, or materially inconsistent with, their knowledge of the corporation, acquired in the course of performing the audit, and report accordingly.

69. ESFA, and where applicable the relevant MCA/GLA, will notify both corporations and their auditors of the value of the college's main funding grants through funds' payments statements, generated through the individualised learner record (ILR) returns, to be included as income within the corporation's annual accounts. Responsibility for the accuracy of funding claims remains with the corporation.

70. Where the external auditor is unable to provide an unmodified audit opinion or where they wish to use an alternative form of wording, or where the external auditor intends to include an emphasis of matter paragraph or material uncertainty relating to going concern, they must communicate this to the corporation as soon as practically possible.

71. External auditors are required to communicate matters arising from the audit with those charged with governance. This must be in the form of a written report ("management letter"), prepared in accordance with *ISA (UK) 260 Communication with Those Charged with Governance* and *ISA (UK) 700, Forming an Opinion and Reporting on Financial Statements*. Auditors are required to communicate:

- their responsibilities in relation to the audit
- the planned scope and timing of the audit, and
- the significant findings from the audit.

72. External auditors are required to report:

- their views about significant qualitative aspects of the corporation's accounting practices, including accounting policies, accounting estimates and financial statement disclosures
- significant difficulties, if any, encountered during the audit
- significant matters, if any, arising from the audit that were discussed, or subject to correspondence with management and the written representations the auditor is requesting
- other significant matters arising from the audit that, in the auditor's professional judgment, are relevant to the oversight of the financial reporting process.

73. The management letter should also cover:

- the external auditor's findings, categorised by priority

- any audit recommendations for the period with management responses
- the status of any audit recommendations from the previous year.

74. The management letter must also report on the regularity assurance engagement.

Responsibilities relating to regularity and propriety

75. The reporting accountant must perform the engagement to provide limited assurance. Limited assurance engagements are framed in a 'negative' sense and are those concluding whether, based on the procedures performed and evidence obtained, nothing has arisen that suggests information is materially misstated[10].

76. For corporations, the reporting accountant provides limited assurance that expenditure and income have been applied to purposes intended by Parliament and financial transactions conform to the authorities that govern them.

77. The reporting accountant must set out any material matters within their assurance report on regularity, which may also encompass any findings concerning propriety. Any other findings arising from the engagement should be set out in their management letter to the corporation.

Framework of authorities and criteria for assessment

78. The reporting accountant's assurance report on regularity refers to the authorities that govern the corporation. Understanding the framework of authorities relevant to the conduct of the activities of a corporation will assist the reporting accountant in planning their work and identifying risk of potential material irregularities in the annual accounts.

79. The reporting accountant should have regard to the Financial Reporting Council's Statement of Recommended Practice, Practice Note 10, Audits of Financial Statements of Public Sector Bodies in the United Kingdom (PN10). This sets out a general framework for obtaining reasonable assurance over regularity. The regularity assurance framework for corporations seeks limited assurance, and therefore PN10 does not strictly apply. It does, however, remain a useful reference for:

- understanding the framework of authorities

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[10] See International Standard on Assurance Engagements (ISAE) 3000 Revised, Assurance Engagements Other than Audits or Reviews of Historical Financial Information.

- testing to obtain sufficient appropriate evidence
- reporting on regularity
- understanding materiality and risk.

80. Much of the work required to understand the activities and relevant framework of authorities will already have been considered in the audit of the annual accounts[11].

81. In making their assurance report on regularity, the reporting accountant will need to further understand and assess how the corporation has interpreted the framework of authorities in its own context, and the systems, procedures and controls that have been put in place to ensure compliance. This framework will, with effect from 29 November 2022, include those matters set out in the "Dear Accounting Officer" letter of that same date and ESFA's bite size guides.

82. The corporation's statement of regularity, propriety and compliance, and regularity self-assessment questionnaire, should inform the reporting accountant's work by demonstrating how the requirements are met.

Regularity and propriety testing

83. In planning their testing, the reporting accountant should refer to Practice Note (PN) 10 , International Standard on Assurance Engagements (ISAE) 3000, the "Dear Accounting Officer" letter of 29 November 2022 and ESFA's bite size guides.

- PN10 provides the general framework for obtaining assurance over regularity. Part 2: paragraph 44 sets out that procedures, designed to obtain assurance over regularity, would usually comprise a combination of tests of controls and substantive procedures.
- ISAE 3000 provides some specific considerations for limited assurance engagements. It sets out that the nature and extent of testing is a matter for the professional judgement of the reporting accountant, although it is anticipated that testing will be based primarily on the corporation's statement of regularity, propriety and compliance.
- The "Dear Accounting Officer" letter of 29 November 2022 and ESFA's bite size guides capture new requirements arising from reclassification that

[11] See International Standard on Auditing (UK) 315 and International Standard on Auditing (UK) 250A.

colleges/college groups must follow. They detail how certain transactions must be dealt with by the statutory FE sector under MPM requirements, the delegated limits given to colleges/college groups in relation to these transactions, and where and how prior approval must be sought from DfE before entering into them.

84. It will typically be most efficient to carry out regularity work in conjunction with, and at the same time as, the audit of the annual accounts.

85. Regularity testing of the ILR return is not excluded from the reporting accountants' work. However, the reporting accountant may rely on the work they have undertaken on ESFA funding body grants and contracts in the financial statements audit to address the likelihood of relevant material irregularities in respect of funding generated through the ILR.

86. The regularity and propriety work must include all corporation expenditure and income received, regardless of source. This includes any subsidiaries, or joint venture arrangements if that joint venture is consolidated within the group accounts. Reporting accountants will conduct their work on the subsidiary/joint venture in accordance with the framework of authorities that govern the subsidiary/joint venture. For example, if the subsidiary is a company, then Companies Act 2006 and any legislation or regulations relating to its operations will be applicable. If the reporting accountant identifies any matters of a regularity, propriety or compliance nature involving a subsidiary or joint venture, they must notify these to the corporation and to ESFA.

87. Reporting accountants must notify the corporation and ESFA, if potential regularity or propriety matters that could affect ILR returns and associated claims come to their attention during their work. They should also notify the relevant MCA/GLA if devolved adult education funding is concerned.

88. Where the reporting accountant has specific concerns over the regularity or propriety of income and expenditure at a corporation, they may, exceptionally, write to ESFA (and the MCA/GLA when relevant) and ask for a summary of any relevant matters, for example fraud and whistleblowing (if such information is not reasonably available from the corporation).

89. The reporting accountant should consider whether they can rely on the work of a third party (such as internal auditors, if applicable), who has carried out assurance reviews relevant to the objective of the regularity assurance engagement. It is a matter of professional judgement how much reliance the reporting accountant places on this work.

90. ESFA does not require reporting accountants to maintain separate files in respect of the audit of the annual accounts and their regularity work. As mentioned above, they can incorporate regularity sampling into the audit of the annual accounts. However, they

will need to clearly document their regularity assurance work, including the objectives, methods, results / findings and conclusions for the testing, which underpins their assurance report on regularity.

The assurance report on regularity

91. Annex E sets out the required format of the reporting accountant's assurance report on regularity, including the format of the limited assurance conclusion.

92. The scope of the limited assurance engagement is set out at paragraphs 75 to 82 above.

93. Where the reporting accountant identifies potential irregularities or instances of impropriety, these should be discussed with the corporation's finance team in the first instance. Potential regularity exceptions should be considered individually and in aggregate in terms of whether they represent a material irregularity, by either value or nature. Any such issues that cannot be resolved satisfactorily with the finance team should be escalated to the accounting officer and the audit committee or board. Since propriety goes beyond considerations of compliance with a framework of authorities to include conduct and behaviour, it is not readily susceptible to objective verification. Where concerns around propriety arise, then the issue of materiality may need to be considered further. Whilst a transaction leading to a personal or private benefit may be deemed to be material by nature, regardless of value, there may need to be more scrutiny, if the benefit is received by a senior member of staff or governor, as the impropriety on the part of the corporation leader(s) may be indicative of endemic problems. Consequently, considerable professional judgement and discretion will be required in both forming a view as to whether or not there is a material issue to be addressed and how such an issue should be escalated or reported.

94. With regards to the reporting of issues of propriety, which come to light during the regularity engagement, the reporting accountant should have regard to PN10, Part 2: paragraph 9. This states that "*when issues of propriety come to light in the course of the audit of financial statements, the auditor considers whether and, if so, how they may be reported*". Accordingly, the reporting accountant has discretion as to if and how such matters are reported. This does not preclude any propriety exceptions being formally reported as part of the regularity conclusion.

95. When the reporting accountant concludes that there are matters of material irregularity, by virtue of value or nature, either individually or in aggregate of transactions underlying the annual accounts, this will lead to a modified assurance report on regularity, including full disclosure of those matters in that report. The reporting of matters of material impropriety will need to be determined under the PN10 framework, outlined

above. However, if any of these matters of irregularity or impropriety (either individually or collectively) constitute matters of material significance[12], then they must in any event notify ESFA.

96. Where irregularity is identified, but the reporting accountant concludes it is not material, by virtue of value or nature, either individually or in aggregate, or does not relate to transactions underlying the annual accounts, the issue must be reported in the reporting accountant's management letter. Where instances of impropriety arise which do not result in a modified conclusion or disclosure in the report on regularity, it is ESFA's expectation that the reporting accountant will report such matters in their management letter.

97. Where the reporting accountant is unable to provide a report on regularity or where they wish to use an alternative form of wording, they must communicate this to the accounting officer, the chair of the corporation, the chair of the audit committee, and ESFA as soon as is practical.

98. The reporting accountant must consider the impact of any regularity or propriety issue on their audit of the annual accounts.

Materiality and risk

99. In the absence of an alternative assurance standard, the Code draws on some of the principles set out in PN10 even though the further education sector is not specifically within scope.

100. PN10 (Part 2: paragraphs 33 to 42) sets out that the auditor's assessment of what is material is a matter of judgement and includes both quantitative (value) and qualitative (nature) considerations. Materiality affects both the way in which the auditor plans and designs the work on regularity and propriety, and how the auditor evaluates and reports the results of that work. The assessment of materiality at the planning stage for regularity and propriety may be different to that applied for the audit of the financial statements as a whole.

101. Materiality is relevant when planning and performing the assurance engagement, including when determining the nature, timing and extent of procedures, and when evaluating whether the subject matter information is free of misstatement.

[12] As defined in: Matters of Material Significance reportable to UK charity regulators.

102. The materiality level applied for the testing of transactions in terms of whether they are regular, proper or have been used in accordance with the contractual terms and conditions of grant, may also differ to that applied to the annual accounts.

Additional audit requirements for colleges registered with the Office for Students

103. Corporations that are registered with the Office for Students (OfS) are obliged to follow the requirements of the extant OfS Accounts Direction, as well as those set out in this document. OfS-registered corporations, and their auditors, should take note of the requirements set out in the OfS Accounts Direction. It should be stressed that the OfS requirement to provide an audit opinion on use of funds as set out in the OfS Accounts Direction does not remove the requirement for the reporting accountant to provide a report on regularity as set out in Annex E of this document.

Assurance reviews of subcontracting standard

104. Colleges with subcontracted provision of over £100k are required to obtain an independent report from reporting accountants covering the arrangements to manage and control subcontractors in accordance with paragraph 11. Each assurance report should be considered by a provider's audit committee, or equivalent, and reflected in the appropriate minutes. Further information can be found in ESFA's publication '*Assurance Reviews of the subcontracting standard for post-16 providers*'.

Fraud

105. Fraud, by its inherent nature of deception to result in financial or personal gain, means that any such transactions must be irregular and improper. Identified fraud that is significant (paragraph 56) or material will lead to a modified assurance report on regularity, including full disclosure of those matters in that report.

106. For the avoidance of doubt, the additional requirement to report fraud as a breach of regularity does not alter, reduce or replace the standard reporting requirements for fraud including the Proceeds of Crime Act 2002 (POCA). Auditors / reporting accountants should consider the appendix to ISA (UK) 250, Section A (formerly Practice Note 12 on Money Laundering - Guidance for Auditors on UK Legislation).

Required provisions in the terms of engagement

107. The duties of the external auditor/reporting accountant must be clearly set out in an engagement letter in accordance with ISA 210 (Revised 2016) [Updated May 2022]. Annex A sets out standard clauses, covering the external audit of the accounts and the regularity assurance review, that must be included within the letter of engagement between the corporation and the external auditor/reporting accountant. These clauses include details of the arrangements for the regularity assurance engagement, which allow ESFA, DfE, and any other funding authority to draw assurance from the report on regularity.

108. Annex B sets out standard terms of reference for the regularity assurance engagement. These terms outline the responsibilities of the corporation, reporting accountant and ESFA in relation to the engagement, and the duty of care owed by the reporting accountant.

109. Colleges registered with the OfS and their auditors will need to build both a “use of funds” and “regularity” aspect into their letters of engagement (paragraph 103).

110. Where the corporation and/or external auditor/reporting accountant want to use an alternative form of words, they must agree this with ESFA.

111. There is no expectation that ESFA will sign the engagement letter.

Part 4: Requirements for independent training providers

General responsibilities

112. ITPs must meet any statutory responsibilities they have in relation to financial accounts, audit, and other legal, financial and governance requirements. Legislation and guidance most common to ITPs are summarised in paragraphs 112 to 123.

113. ITPs receive funding under grant funding agreements and contracts with ESFA and DfE. These set out in detail the requirements placed on and responsibilities of ITPs, including the requirement to submit financial statements to ESFA, and that any mandatory requirements of this Code form a condition of funding. For a complete picture of ESFA and DfE's assurance requirements, the Code should be read alongside ESFA and DfE's grant funding agreements and contracts. Some ITPs also receive funding under grant funding agreements and contracts with MCAs or the GLA in respect of devolved adult education funding, which also require compliance with this Code.

114. All ITPs may be subject to a funding audit by ESFA in respect of funds received (paragraphs 8 to 13).

Financial accounts

115. ITPs, in receipt of ESFA and/or DfE funds, are required to submit their accounts to ESFA annually in accordance with *ESFA's approach to assessing the financial health of organisations*.[13]

116. Private limited companies, companies limited by guarantee, limited liability partnerships, and community interest companies have a statutory responsibility under the Companies Act to file their annual financial accounts with Companies House within 9 months of their financial year end (unless stated otherwise). Public limited companies must meet the same requirement within 6 months of their financial year end under the Act.

117. Under the Charities Act, all registered incorporated charities (and registered unincorporated charities with a gross income exceeding £25,000 in that financial year)

[13] Additionally, from 1 August 2024 ITPs must meet the requirements in the Financial Handbook for Independent Training Providers.

must file their financial accounts and their trustees annual report with the Charities Commission within 10 months of their financial year end.

118. Other legal entities should ensure they comply with their statutory requirements, as set out in their incorporation documents or other relevant legislation.

External audit

119. Private limited companies, companies limited by guarantee, and community interest companies have a statutory responsibility under the Companies Act to appoint external auditors to audit their annual financial accounts unless they meet two of the three criteria defined in the Companies Act Section 382(3).

120. Limited liability partnerships are also required to have their accounts audited unless they meet the criteria as defined in the Companies Act.

121. All public limited companies require external audit.

122. Charitable organisations may be required to have an external audit or an independent examination depending on their size. The criteria for determining whether a charity requires an audit is set out in the Charities Act 2011.

123. Other legal entities should ensure they comply with their relevant statutory requirements in respect of external audit, where applicable.

Assurance reviews of subcontracting standard

124. Providers with subcontracted provision of over £100k are required to obtain an independent report from reporting accountants covering the arrangements to manage and control subcontractors in accordance with paragraph 11[14]. Each assurance report should be considered by a provider's audit committee, or equivalent, and reflected in the appropriate minutes. Further information can be found in ESFA's publication 'Assurance Reviews of the subcontracting standard for post-16 providers'.

Other legal requirements

125. Private limited companies and companies limited by guarantee should be aware of all of the information they need to provide by law in their annual directors' report as set out in The Companies (Miscellaneous Reporting) Regulations 2018. They should also

[14] ITPs which only contract with DfE to deliver Skills Bootcamps are not required to comply with the subcontracting standard.

familiarise themselves with the UK Corporate Governance Code published by the Financial Reporting Council in July 2018.

126. Public limited companies are subject to these requirements and in addition are by law required to have a qualified company secretary, have at least two directors, and hold an annual general meeting.

Annex A: Clauses for inclusion in the letter of engagement

The following paragraphs must be included in the letter of engagement between the corporation and their external auditor/reporting accountant.

Regarding the audit of the annual accounts

This letter establishes an agreement between [name of audit firm] and the corporation in relation to the audit of, and reporting on, the corporation's annual report and financial statements (annual accounts).

We shall conduct our audit of the corporation's annual accounts in accordance with the latest International Standards of Auditing (UK) issued by the Financial Reporting Council ('ISAs') and in full compliance with any instructions, guidance or frameworks issued by ESFA, and where relevant any issued by Mayoral Combined Authorities or the Greater London Authority in respect of devolved adult education funding, including those within the extant College Accounts Direction.

We have a professional responsibility to report, if the annual accounts do not comply in any material respect with applicable accounting standards and the requirements of the accounts direction, unless in our opinion non-compliance is justified in the circumstances. In determining if departure is justified, we will consider whether:

- the departure is required for the annual accounts to give a true and fair view
- adequate disclosure has been made concerning the departure.

We shall report to ESFA, and when applicable the relevant devolved authority, as soon as practically possible, any significant fraud or major weakness or breakdown in the accounting or other control framework, of which we become aware, subject only to the requirements of the Proceeds of Crime Act 2002.

Where we as auditors conclude that we must resign from the engagement before the expiry of the term of office, we will provide the corporation with a statement of circumstances that we consider should be brought to its attention, which the corporation will send to ESFA.

Where we cease to hold office in any circumstance, we will provide ESFA with details of any matters, which would normally be noted in the professional enquiry letter to successor auditors under the ICAEW professional requirements, where such matters exist.

Regarding the regularity assurance engagement

The Secretary of State for Education, acting through ESFA, has prescribed standard terms of reference for regularity assurance engagements. These are included within Annex B of the Post-16 Audit Code of Practice.

We will perform our regularity assurance review and report to ESFA and, if applicable the relevant devolved authority, in accordance with those standard terms of reference.

The Secretary of State, acting through ESFA, will not be required to sign this engagement letter.

Annex B: Terms of reference for the regularity assurance engagement

The following are the pre-agreed terms of reference on which the Secretary of State for Education, acting through ESFA, engages the reporting accountant to perform a limited assurance engagement on regularity in connection with the corporation.

ESFA accepts that an agreement between it, the corporation and its reporting accountant on these terms is formed when the reporting accountant signs its assurance report on regularity and this is submitted to ESFA or the relevant devolved authority.

ESFA is not required to sign anything. The Code and extant College Accounts Direction provide the framework and reporting requirements for the statement of regularity, propriety and compliance. The large number of corporations in scope of this engagement make it impractical to have an engagement letter with each individual reporting accountant. Therefore, standard terms of reference are used.

Amendments to these standard terms may only be considered in exceptional circumstances and require ESFA's approval. Amendments may cause delay to the reporting accountant's work leading to late submission of the related report and consequent breaches of funding conditions.

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1 Introduction

The corporation is required to submit to ESFA an assurance report on regularity signed by a reporting accountant, which provides limited assurance, as part of its annual report and financial statements (annual accounts). This report will address any issues of irregularity including those arising from the 'Managing Public Money' related and other transactional requirements linked to reclassification (as captured in the "Dear Accounting Officer" letter of 29 November 2022 and ESFA's bite size guides). These terms of engagement set out the basis on which the reporting accountant will sign the assurance report on regularity.

2 The corporation's responsibilities

The corporation is responsible for:

- complying with the requirements of ESFA's, DfE's and any other public funder's accountability agreements, grant funding agreements and contracts, including provision of information as required

- producing annual accounts to 31 July[15] each year in accordance with the requirements of the extant College Accounts Direction

- having these accounts audited by a registered auditor and the regularity assurance engagement completed by the auditor in their role as reporting accountant

- submitting audited accounts to ESFA by ESFA's required deadline

- ensuring the statement of corporate governance and internal control is accurate and comprehensive

- maintaining proper records complying with the terms of any legislation or regulatory requirements and the terms and conditions of funding

- complying with the framework of authorities relevant to regularity and propriety.

The corporation's accounts shall meet the requirement of the extant College Accounts Direction to include the reporting accountant's assurance report on regularity.

The corporation will make available all records, correspondence, information and explanations that the reporting accountant considers necessary to enable the reporting accountant to perform their work. The reporting accountant will request, and the corporation shall provide:

- written representations in relation to matters for which independent corroboration is not available

- confirmation that significant matters have been brought to the reporting accountant's attention.

The corporation, ESFA and where applicable the relevant devolved authority, accept that the ability of the reporting accountant to perform their work effectively depends upon the corporation providing full and free access to financial and other records. The corporation shall obtain any such records held by a third party and ensure they are made available to the reporting accountant.

The reporting accountant accepts that, whether or not the corporation meets its obligations, there remains an obligation on the reporting accountant to ESFA to perform its work with reasonable care. The failure by the corporation to meet its obligations may

[15] Amend dates as necessary to reflect extended period or short period accounts.

cause the reporting accountant to modify its conclusion or be unable to provide a conclusion.

3 Scope of the reporting accountant's work

The reporting accountant will use professional judgement and take account of the particular circumstances of the corporation to determine the scope of work to support the conclusion in accordance with the Post-16 Audit Code of Practice (the Code). In determining the scope of their work, the reporting accountant must consider the MPM related and other transactional requirements arising from reclassification as captured in the "Dear Accounting Officer" letter of 29 November 2022 and ESFA's bite size guides.

The reporting accountant may communicate with ESFA as part of the planning and delivery of the regularity engagement where they believe there is a specific issue with a corporation.

4 Form of the reporting accountant's report

The mandatory report that the reporting accountant will provide, on the assumption that the reporting accountant is able to report in that form, is included in the Code.

The reporting accountant's report is prepared on the following basis:

- that ESFA has no right by virtue of regularity engagement to place reliance on the work of the external auditor/reporting accountant and the opinion they form in respect of their audit of the annual accounts of the corporation.
- the reporting accountant's report is prepared solely for the use of the corporation and ESFA, and solely for the purpose of submission to ESFA in connection with the requirements of the Code. It may not be relied on by the corporation or ESFA for any other purpose.
- the corporation, ESFA or others may not rely on any oral or draft reports the reporting accountant provides. Exceptionally and upon request by the corporation or ESFA, the reporting accountant may provide a letter or report on interim findings or specific regularity matters, based on findings to date and without prejudice to any conclusions contained in the final signed report. Such reports/letters will be subject to a variation of or addendum to these terms, agreed with the corporation and ESFA. Otherwise, the reporting accountant accepts responsibility to the corporation and ESFA for the reporting accountant's final signed reports only.
- to the fullest extent permitted by law, the firm of reporting accountants, its partners and staff neither owe nor accept any duty to any person or entity

(including, without limitation, any person who may use or refer to publications of ESFA) other than the corporation and ESFA. They shall not be liable for any loss, damage or expense of whatever nature which is caused by any person or entity other than the corporation or ESFA's reliance on representations in the reporting accountant's reports.

5 Liability provisions

The reporting accountant will perform the engagement with reasonable skill and care and accepts responsibility to the corporation and ESFA, for losses, damages, costs or expenses ('losses') caused by its breach of contract, negligence or wilful default, subject to the following provisions:

- the reporting accountant will not be responsible or liable if such losses are due to the provision of false, misleading or incomplete information or documentation or due to the acts or omissions of any person other than the reporting accountant, except where, on the basis of the enquiries normally undertaken by reporting accountants within the scope set out in these terms of engagement, it would have been reasonable for the reporting accountant to discover such defects.

- the reporting accountant accepts liability without limit for the consequences of its own fraud and for any other liability which it is not permitted by law to limit or exclude.

- subject to the previous paragraph, the reporting accountant must discuss any proposal to limit their liability, whether to the corporation and/or to ESFA, arising on any basis; whether in contract, tort (including negligence) or otherwise, arising from or in any way connected with this engagement (including any addition or variation to the work) with the audit committee and ESFA in advance of approval by the corporation. This is on the basis that the corporation and ESFA agree that any such limitation to the reporting accountant's liability will apply in aggregate to the reporting accountant's liability to the corporation and ESFA.

- for the avoidance of doubt, where the reporting accountant has agreed a limitation of their liability with the corporation, that limitation shall apply only to the period to which the regularity engagement refers. In most instances this will mean that any limitation will apply only to the 12-month period covered by the corporation's financial statements.

The corporation and ESFA agree that they will not bring any claims or proceedings against any individual partners, members, directors or employees of the reporting accountant. This clause is intended to benefit such partners, members, directors and employees who may enforce this clause pursuant to the Contracts (Rights of Third Parties) Act 1999 ('the Act'). Notwithstanding any benefits or rights conferred by this agreement on any third party by virtue of the Act, the parties to this agreement may agree to vary or rescind this agreement without any third party's consent. Other than as expressly provided in these terms, the Act is excluded.

Any claims, whether in contract, negligence or otherwise, must be formally commenced within 2 years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the action, and in any event no later than six years after the relevant report was issued (or, if no report was issued, when the reporting accountant accepted the engagement in writing). This expressly overrides any statutory provision which would otherwise apply.

6 Fees

The reporting accountant's fees, together with VAT and out-of-pocket expenses, will be agreed with, and billed to, the corporation. ESFA is not liable to pay these fees.

7 Quality of service

The reporting accountant will investigate all complaints. ESFA or the corporation has the right to take any complaint to the professional supervisory body governing the reporting accountant.

8 Provision of Services Regulations 2009

The reporting accountant will not be prevented or restricted by virtue of the reporting accountant's relationship with the corporation or ESFA, including anything in these terms of engagement, from providing services to other clients. The reporting accountant's standard internal procedures are designed to ensure that confidential information communicated during the course of an assignment will be maintained confidentially.

9 Freedom of Information Act 2000

If ESFA receives a request under the Freedom of Information Act 2000 for the disclosure of confidential information, it will inform the corporation promptly of such request and ensure that any representations made by the corporation, or reporting accountant, are fully taken into account when it responds to the request. However, the decision to release information rests with ESFA.

10 Alteration to terms

Amendment to these standard terms of engagement may only be considered in very rare circumstances. All additions, amendments and variations to these terms of engagement shall be binding only if in writing and signed by the duly authorised representatives of the parties. These terms do not affect any separate agreement in writing between the corporation and the reporting accountant.

11 Applicable law and jurisdiction

This agreement shall be governed by, interpreted, and construed in accordance with English law.

The corporation, ESFA, and the reporting accountant irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise on any basis in connection with the validity, effect, interpretation or performance of, or the legal relationship established by this agreement or otherwise arising in connection with this agreement.

Annex C: Summary of regularity concerns

This annex sets out some of the characteristics of providers where we anticipate possible regularity concerns. Corporations and their auditors may wish to consider these areas when assessing compliance. This list is not exhaustive and is given as guidance only.

Governance

Good governance is important in delivering a high-quality service and ensuring accountability. The corporation is responsible for good governance. Regularity concerns can arise where there is indication of:

- an ineffective governance structure, including lack of policies in key areas.
- weaknesses in the corporation's approach to holding management to account.
- inadequate record keeping, for example poor quality or missing meeting minutes.
- ineffective implementation of policies and procedures, for example: in tendering, capital projects, budget monitoring and reporting, and anti-fraud measures
- inadequate reflection of charity law and associated good practice, including Charity Commission guidance on decision-making
- inappropriate related party relationships and transactions and incomplete disclosure thereof.

Management

Effective management is needed if a corporation is to deliver a quality service through day-to-day operations. Regularity concerns can arise where there is indication of:

- ineffective management structure, including lack of control processes, non-compliance with control processes and lack of relevant experience in key areas.
- weaknesses in systems and controls reported by internal audit.
- failure to reflect the changes arising from reclassification of the statutory further education sector in the college's systems and procedures.
- inadequate record keeping, for example poor quality bookkeeping.
- inadequate budgetary control and management accounting arrangements
- ineffective use of resources, including land, buildings, staff, cash, and borrowings
- slow response to issues identified by Ofsted.

Useful resources

It is important to remain vigilant to risks, which, if they crystallise, result in regularity issues. Useful resources for further consideration include:

- College: investigations and notices to improve

- Governance guide
- FE Commissioner reports
- College corporation financial management good practice guides
- "Dear Accounting Officer" letter of 29 November 2022 and ESFA's bite size guides
- The College Financial Handbook (*Published in Spring 2024 with its provisions taking effect from 1 August 2024*).
- Common issues - we periodically publish information and guidance about common issues identified from our funding audit work to help post-16 providers improve their internal control framework.

Annex D: Anti-fraud checklist for post-16 providers

Fraud occurs in every sector and providers need to be aware of the potential for it to occur.

ESFA has published indicators of potential fraud: education providers, which provides information for academies, colleges, private training providers and employer providers in receipt of ESFA and/or DfE funding to help them identify potential fraud.

The 10 questions below are intended to help providers review their arrangements for preventing, detecting and dealing with fraud should it occur. Arrangements will vary according to the size, structure and complexity of the provider.

Summary
Responsibility and accountability embedded in the structure
Adopting a risk-based approach and a focus on prevention
Realistic approach to resources supporting counter fraud
Audit committee engagement
Assurance sought on effectiveness of counter fraud arrangements

1. Are directors / governors / trustees, the accounting officer (if applicable) and chief financial officer (or equivalent) aware of the risk of fraud and their responsibilities around fraud?
2. Does the provider have a regularly reviewed counter fraud strategy, fraud risk assessment processes and a fraud response plan?
3. Has the provider established systems and processes to respond quickly and effectively to allegations of suspected fraud, and respond to actual fraud when it arises?
4. Does the provider engender an anti-fraud culture throughout the organisation, for example: a clear statement of commitment to ethical behaviour; the appointment of an anti-fraud champion; focus on prevention; sound financial regulations (including segregation of duties); recruitment; disciplinary procedures; screening; training and induction?
5. Is fraud risk included within the remit of the provider's audit committee?
6. Is fraud risk considered within the provider's risk management process?
7. Does the provider have regularly reviewed and published policies on whistleblowing, declarations of interest and receipt of gifts and hospitality?
8. Is it clear how and to whom suspicions of fraud in the organisation or subcontractors should be reported, both within the provider, and externally (e.g. Action Fraud, external auditors, regulators, ESFA as necessary)?
9. Does the provider periodically evaluate the effectiveness of anti-fraud measures in reducing fraud?
10. Does the provider undertake 'lessons learned' exercises when suspected or actual fraud has taken place?

Annex E: Reporting accountant's assurance report on regularity

To: The corporation of [name] and Secretary of State for Education, acting through Education and Skills Funding Agency (ESFA)

In accordance with the terms of our engagement letter dated [x] and further to the requirements and conditions of funding in ESFA and DfE's accountability agreements, grant funding agreements and contracts, or those of any other public funder, we have carried out an engagement to obtain limited assurance about whether anything has come to our attention that would suggest, in all material respects, the expenditure disbursed and income received by [name of corporation] during the period 1 August 20XX to 31 July 20XX[10] have not been applied to the purposes intended by Parliament and the financial transactions do not conform to the authorities which govern them.

The framework that has been applied is set out in the Post-16 Audit Code of Practice (the Code) issued by ESFA and in any relevant conditions of funding, concerning adult education notified by a relevant funder.

This report is made solely to the corporation of [name of corporation] and ESFA in accordance with the terms of our engagement letter. Our work has been undertaken so that we might state to the corporation of [name of corporation] and ESFA those matters we are required to state in a report and for no other purpose. To the fullest extent permitted by law, we do not accept, or assume, responsibility to anyone other than the corporation of [name of corporation] and ESFA for our work, for this report, or for the conclusion we have formed.

Respective responsibilities of [name of corporation] and the reporting accountant

The corporation of [name of corporation] is responsible, under the requirements of the Further & Higher Education Act 1992, subsequent legislation and related regulations and guidance, for ensuring that expenditure disbursed, and income received, are applied for the purposes intended by Parliament, and the financial transactions conform to the authorities that govern them.

Our responsibilities for this engagement are established in the United Kingdom by the Code our profession's ethical guidance and are to obtain limited assurance and report in accordance with our engagement letter and the requirements of the Code. We report to you whether anything has come to our attention in carrying out our work, which suggests that in all material respects, expenditure disbursed and income received, during the period 1 August 20XX to 31 July 20XX[10] have not been applied to purposes intended by Parliament or that the financial transactions do not conform to the authorities which govern them.

Approach

We conducted our engagement in accordance with the Code issued by ESFA. We performed a limited assurance engagement as defined in that framework.

The objective of a limited assurance engagement is to perform such procedures as to obtain information and explanations in order to provide us with sufficient appropriate evidence to express a negative conclusion on regularity.

A limited assurance engagement is more limited in scope than a reasonable assurance engagement and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in a reasonable assurance engagement. Accordingly, we do not express a positive opinion.

Our engagement includes examination, on a test basis, of evidence relevant to the regularity and propriety of the corporation's income and expenditure.

The work undertaken to draw to our conclusion includes:

- [X]
- [X]

Conclusion

In the course of our work, [except for the matters listed below,][16] nothing has come to our attention which suggests that in all material respects, the expenditure disbursed and income received during the period 1 August 20XX to 31 July 20XX[17] has not been applied to purposes intended by Parliament, and that the financial transactions do not conform to the authorities that govern them.

- [Matter 1]
- [Matter 2]

[Signed]

[Firm]

[Date]

[16] Please delete the words in brackets if there are no matters to be raised.

[17] Amend dates as necessary to reflect extended period or short period accounts.

Education & Skills
Funding Agency

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