



Education & Skills  
Funding Agency

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Dear Chair of the governing body and / or Chief Executive Officer and / or Responsible Officer and / or Headteacher

### **Subcontracting the delivery of education and training using ESFA post-16 funds**

We continue to receive information and investigate cases where subcontracted provision is not appropriately controlled, overseen or managed by the lead provider.

I am writing to affirm our commitment to strengthening oversight in this area. Please confirm, by **clicking the link at the end of this letter by no later than Friday 01 November 2019**, that you have read and understood this communication and confirm that your subcontracting arrangements are in line with our requirements.

The issues underpinning our investigations have ranged in seriousness from complacency and mismanagement, through to matters of deliberate and systematic fraud.

We currently have 11 live investigation cases into subcontractors.

Whilst these cases vary in degrees of seriousness, they all exhibit features that reflect badly upon the organisations involved and clearly suggest that the sector must do better.

I want to make it clear that where poor subcontracting practice is evident to us we will act decisively.

We started a review to improve subcontracting arrangements earlier this year as part of a commitment given in a November 2018 Westminster Hall debate.

As a result, we will be more forensic in our examination of the data and information available to us to hold individuals and organisations to account. We will recover public money where appropriate.

In response to the evidence gathered so far, we have tightened our requirements and made it clear that we will take action with lead providers who do not exercise control over subcontracted provision.

Where subcontracting is done well and for the right curriculum reasons, it can:

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

However, abuse of subcontracting will only ultimately serve to limit access for learners, and we are not prepared to see such practices perpetuated.

We continue to review our approach to the regulation of subcontracting in the sector and are doing this by:

- ensuring public funds are properly and effectively spent, maximising the benefit for learners
- improving our assessment of risk to identify problems earlier and intervene more quickly and decisively
- harmonising and clarifying the rules and requirements across the funding streams where it makes sense to do so.

I will be seeking evidence later this year from those who have an interest in subcontracted delivery. This will inform our thinking about the nature and extent of reforms to subcontracting arrangements.

We will conclude the review this academic year and start to implement the changes at the start of the 2020 to 2021 academic year.

It is important to note that if you are intending to enter into new subcontracts in the course of 2019 to 2020 academic year, you should be aware that our requirements will change, and you should provide for this in your contractual arrangements with subcontractors.

Areas under consideration in our review include, but are not limited to:

- the balance of oversight and accountability arrangements, and with which bodies they should rest
- reasonable expectations of the external audit process
- placing limits on the permitted geographical distance between a directly funded institution and the location where subcontracted provision is delivered
- acting to prevent non-compliance, failure and fraud
- potentially precluding the use of some subcontractors
- reviewing the aggregate funding value of subcontracted provision held by subcontractors
- the use, in respect of subcontracting, of the Register of Training Organisations (RoTO) and the Register of Apprenticeship Training Providers (RoATP).

As a lead provider in receipt of ESFA funds, you will have recently signed and returned grant agreements or contracts for services to us indicating that you accept and will comply with the terms and conditions of our funding. In doing so, you confirmed that you are compliant with all of our requirements including those that relate to subcontracting.

You are also required to be compliant with post-16 funding policy. That means that your organisation has confirmed that you have a process and procedure in place to ensure that

subcontracted provision is delivered properly and securely, and that every subcontracting arrangement that you have meets our requirements.

I am asking that you review your current subcontracting activity and satisfy yourself that it is purposeful, appropriate, and provides added value to learners. We must be confident that you are managing and overseeing it in line with our requirements.

I recognise that most providers deliver good subcontracted provision effectively. The oversight of the use of public funds, however, goes to the heart of the core responsibilities of ESFA; to ensure that funds are spent appropriately, provide value for money and ensure our learners receive the best possible delivery of their education and training.

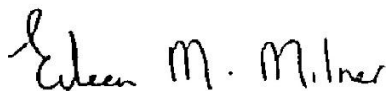
Links to current subcontracting and intervention requirements, and policies, are provided in the annex to this letter.

I am now asking you to formally acknowledge that you have read and understood this communication and confirm that your subcontracting arrangements are in line with our requirements. **Please reply by [clicking on this link](#)<sup>1</sup> by no later than Friday 01 November 2019.** By doing so you will indicate that you are aware of the consequences of failure to adequately control and manage your subcontracted provision and the potential changes to subcontracting arrangements in future.

The absence of a response will trigger further contact from us.

This letter will be published on GOV.UK.

Thank you in advance for your co-operation.



**Eileen Milner**  
Chief Executive  
**Education and Skills Funding Agency**

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<sup>1</sup> [www.education.gov.uk/esfa-subcontracting](http://www.education.gov.uk/esfa-subcontracting)

## Annex

### Links to Subcontracting Requirements and Intervention and Oversight Policies

Apprenticeships:

Main providers

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/821581/1920\\_Provider\\_Rules\\_Version\\_1.0\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821581/1920_Provider_Rules_Version_1.0_FINAL.pdf)

Employer Providers

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/821579/1920\\_Employer-Provider\\_Rules\\_Version\\_1.0\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821579/1920_Employer-Provider_Rules_Version_1.0_FINAL.pdf)

Employers

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/821577/1920\\_Employer\\_Rules\\_Version\\_1.0\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821577/1920_Employer_Rules_Version_1.0_FINAL.pdf)

Using subcontractors in the delivery of apprenticeships guidance note

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/732716/Apprenticeship\\_subcon\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732716/Apprenticeship_subcon_guidance.pdf)

Funding guidance for young people 2019 to 2020 subcontracting control regulations

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814122/Subcontracting\\_guidance\\_2019\\_to\\_2020-v1\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814122/Subcontracting_guidance_2019_to_2020-v1_Final.pdf)

Adult education budget (AEB) funding rules 2019 to 2020

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/826820/AEB\\_2019-20\\_rules\\_2\\_July\\_Version\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826820/AEB_2019-20_rules_2_July_Version_2.pdf)

European Social Fund (ESF) funding rules 2014 to 2020

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/804978/ESF\\_2014-20\\_Funding\\_Rules\\_v1\\_May\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804978/ESF_2014-20_Funding_Rules_v1_May_2019.pdf)

College oversight: support and intervention

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/826898/College\\_Oversight\\_August.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826898/College_Oversight_August.pdf)

How ESFA maintains oversight of Independent Training Providers (ITPs)

<https://www.gov.uk/government/publications/how-esfa-maintains-oversight-of-independent-training-providers-itps/esfa-oversight-of-independent-training-providers-operational-guidance>