



Association of
Employment and Learning
Providers

AELP Submission: #76

**For the sector, by the sector:
Subcontracting expectations and
checklist for a main provider**

Introduction and Background

Subcontracting has become an integral element of the FE system. Subcontracting has grown and evolved mainly because of changes to the funding system and policy development and, as such, little has been written on what good practice looks like and more specifically a defined list of expectations for the main (prime) provider who in accessing public funding has overall accountability and responsibility.

Although the FE system has always had an element of subcontracting, there have been various changes of policy that have increased activity; for example, the Skills Funding Agency's policy of minimum contracting levels for prime providers forced small prime contract holders to hand back their prime contract or transfer it to a large prime and become a subcontractor with no direct access to government funding. The ESFA procurement exercises for the partial procurement of the Adult Education Budget and non-levy apprenticeship funding have created similar circumstances where many providers had to enter into a new prime and subcontracting relationship to have access to any funding. The same is true in the most recent procurement rounds for the devolution of AEB to the Mayoral Combined Authorities (MCAs).

Without a doubt, subcontracting plays a vital part in the FE system for many reasons:

- **Employer Choice:** A desire for large employers to work with one main provider and that provider needing to subcontract to ensure coverage by level, sector, specialism and region.
- **Provider Scope:** Not all providers can deliver the totality of the needs of an individual employer.
- **Specialism:** Many specialist providers offer unique training and want to focus on the training and delivery aspect of the apprenticeship programme where they have the most expertise, leaving the contract administration and back-office functions to larger experienced main providers.
- **Growing Quality Providers:** A desire for new providers to be supported in capacity building by an established provider, who can provide guidance and share best practice in the setup of their own infrastructure and business growth.

Subcontracting comes with several challenges:

- **Funding system:** Parts of the ESFA funding system do not provide sufficient flexibility to ensure that the supply side can fully meet the needs of the demand side.
- **Timing and uncertainty of funding:** The challenge for some existing main contracting providers to access enough funds directly from the government at certain points of the year to meet the needs of the market.
- **Lack of direct funding:** The challenge for providers to access funding directly from the government.
- **Primes' enhanced accountabilities:** The requirement of the current funding rules for the main provider to play a more significant role in both the delivery and the management of all their subcontracted provision.
- **Reputational:** Reputational issues around 'top-slicing' with the often perceived view that the management fee removes funds from learners.
- **Lack of transparency:** Mistrust by subcontractors that main providers can justify their cost.

Understanding and recognising the mains types of subcontracting

A variety of terms have been used as a proxy for subcontracting, such as collaborative working or partnership working as a couple of popular examples, although these examples are far from

exhaustive. Subcontracting comes in all shapes and sizes and is therefore at times difficult to define which is where confusion occurs to whether or not providers are meeting the funding rules or not. Subcontracting can be seen in two different distinct models:

End to End Subcontracting – In essence, this model is where the main provider contracts out a portion of their funding allocation to another provider and that other provider undertakes all the delivery of the provision. This includes recruiting learners and delivering the training independently from the main provider. This has been a model which has operated within the sector for many years across both apprenticeships and on AEB. However, changes to the ESFA funding rules for levy-funded apprenticeship starts from May 2017 and subsequently for non-levy funded apprenticeships from January 2018 has driven down the volumes of this type of subcontracting relationship significantly. Some of this type of subcontracting remains in the apprenticeship space, mainly through levy-funded provision where a main provider delivers occupational provision and manages a supply chain for the employer which includes other occupational provision through a prime provider model. Aside from apprenticeships, end to end subcontracting is still the main type of subcontracting operating within the AEB marketplace. With all employers moving to the Apprenticeship Service and all providers on the RoATP able to access funding directly, this is another reason which will impact the volume of apprenticeship subcontracting being delivered moving into 2020 and beyond.

Specialist Subcontracting – specialist subcontracting is an area which has developed over the last couple of years and is the model of subcontracting which now operates within the apprenticeship marketplace. In essence, this is where the main provider brings in a specialist service from a subcontractor. This might be the delivery of a specific specialist element within an apprenticeship standard. A good example of this might be where the main provider is delivering the Level 5 Human Resources (HR) Consultant / Partner apprenticeship standard which includes the mandatory CIPD level 5 Intermediate Diploma in Human Resource Management and the main provider cannot become an accredited CIPD centre in their own right. In this example, the main provider uses a subcontractor to deliver the mandatory qualification.

What isn't subcontracting

It is important to recognise that many providers in the sector, including not just ITPs, but also FECs, HEIs and Employer-Providers use freelance tutors or associates to support in the delivery of their apprenticeship programme. Key reasons for this include the flexibility of not having a fixed cost overhead, but also to act as a supply resource to enable providers to scale up quickly to meet the demands of employers. It is important to be clear that in the past some providers have established subcontracting arrangements for Advanced Learner Loans, but labelled these as “associate arrangements” in an attempted workaround to bypass funding rules which stopped the practice of subcontracting for that specific funding stream. The key thing to explore here is not the label given to the arrangement, but the relationship and activity that takes place behind it which is critical to understand what is a subcontract under another name and what is a **contract for service**.

A contract for service being either an individual or an arrangement with a third party organisation to draft in freelance delivery staff to support a provider with the delivery of their programme. This arrangement is purely around providing extra staffing capacity to help deliver the programme to meet the needs of the employer. The staff may not be employed directly by the main provider but clearly work under the control of the main provider, utilising the main provider's facilities, resources and materials to support the delivery of the programme. A parallel example of this is where school contracts in a supply teacher to help cover in a period of staff absence or sickness.

Expectations of a main (prime) provider

A prime-subcontractor relationship should not be solely a vehicle to access funding. It should be a tangible, healthy and collaborative partnership between the prime provider and its supply chain. This partnership should be fair and transparent and we have produced a list of example best practice activity which the prime provider should be undertaking/offering to its supply chain as part of their agreement:

Acceptable fees, charges and additional services

The greater the proportion of the funding not being spent directly on training the apprentice then by default the likelihood that the quality of the training and experience of the individual apprentice is negatively impacted. This is somewhat of a self-fulfilling prophecy, with the more funding being retained by the prime provider meaning the less the subcontractor has to spend on the quality of the programme. If prime providers carry out appropriately robust due diligence and adequately oversee the quality assurance of the subcontractor's delivery, rather than operating at arm's length then poor practice and poor quality should be quickly eradicated and managed out of our apprenticeship ecosystem.

Fees and charges should not exceed 20%. To be clear 20% should not be the 'benchmark' and in most cases will be less and should be proportional to the service being delivered. Fees and charges should relate to the delivery of training and be separate from other payments to enhance the delivery, such as incentive payments for the cost of supporting younger apprentices, apprentices receiving uplifts, learner support payments or residential accommodation costs. Main providers should be open and transparent with fees and charges, publishing these clearly and in an accessible format on their public web site. Payment terms should be clearly defined in the contract between the main provider and subcontractor. There should be timely payment arrangements. Furthermore, the exit process for when the partnership reaches its conclusion should be clearly documented and defined in the contractual agreement between the two parties.

Quality monitoring and quality assurance

The activities for monitoring and support will include quality visits, contract reviews and MIS meetings as standard, unannounced visits, themed reviews may also take place at greater frequency. Through these activities, the prime provider evaluates, monitors and where necessary sets target improvements and/or risk-based intervention plans, that include (but not limited to) the following:

- Progression and destination results
- Equality & Diversity Impact Measures (EDIMs)
- Learner and employer progress and timely success
- Learner satisfaction
- Quality of Teaching, Learning and Assessment
- Support and training with CPD to improve their quality infrastructure inclusive of observations of teaching and learning staff
- Approach to learner's development in staying safe, Equality and Diversity, British Values,
- Prevent Duty and wider employability skills
- Performance against delivery profile and employer requirements
- Audit compliance meets requirements of RoATP and other similar frameworks
- Policy review and support to enrich
- Company Director checks as part of due diligence at 6-month intervals
- Quality assurance sampling (announced and unannounced) including interviews with learners and staff.
- Direct observation training, advice and guidance
- Themed quality monitoring inclusive of a variety of external review readiness
- Self-assessment support and improvement planning projects

For the sector, by the sector: Subcontracting expectations and checklist for a main provider



- Access to staff development and a range of training including Safeguarding, E&D, British Values and Prevent.
- Sharing good practice and policy/legislation updates

MIS, audit and ILR services

Prime provider's MIS department schedules and holds monthly support and info exchange meetings with each delivery subcontractor that includes (but not limited to) the following:

- Monthly processing of starts, on programme, leavers and completions
- ILR reporting and PO/remittance preparation
- Audit and follow up compliance training.
- EPA Gateway administration
- Past planned end date learners (PPED)
- Learners on a break in learning (BIL)
- Contact evidence submitted on time
- Health and Safety vetting and insurances for the delivery partners' employers
- Enrolment queries (extended to all paperwork submitted if need be)

Contracting / contract management

Ongoing profile updates are carried out and variations issued where necessary if the profile cannot be met. This is determined through the quality and performance reviews that take place with each delivery partner. The prime provider supports delivery subcontractors to continue to develop their provision, this could include but not limited to;

- Access to a team of experts for all function e.g. MIS, Quality, Operations
- Guidance on selecting Awarding organisations and End Point Assessment organisations
- Due Diligence risk assessment and status updates
- Achievement and EDIMs Reporting
- Support to enrich Safeguarding practices.
- In evidencing 20% OTJ within Apprenticeship programmes.
- Funding rule updates, training and guidance
- Support in the use of TAS System
- Curriculum development and delivery set up guidance
- Support in achieving and maintain matrix accreditation
- Profile planning, review and performance management
- Contract delivery guidance ensuring ESFA funding rules are met
- Provision of a quality dashboard
- Matrix accredited advice and guidance
- New standards delivery support
- Learner recruitment via NAS website
- Learner voice strategies and improvement planning
- Preparation for External Inspection
- Generic and themed Quality Support and review
- Safeguarding, British Values, Equality and Diversity and Prevent training and support
- Access to staff development activities
- Self-Assessment and Quality Improvement Support
- Teaching and Learning Observations (Inc. paired observations)
- Group sharing practice and development sessions.

For the sector, by the sector: Subcontracting expectations and checklist for a main provider



- Conducting focus groups or individual face to face feedback sessions with learners and employers.

Association of Employment and Learning Providers (AELP)
November 2019



Association of Employment and Learning Providers
2nd Floor,
9 Apex Court
Bradley Stoke
Bristol
BS32 4JT

t: 0117 986 5389

e: enquiries@aelp.org.uk

www.aelp.org.uk



@AELPUK



AELP

The Association of Employment and Learning Providers is a Company Limited by Guarantee.

Company No. 2209949