



Education & Skills  
Funding Agency

# **Funding guidance for young people 2020 to 2021**

**Subcontracting control regulations**

**July 2020**

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## Summary

This guidance document covers the period 1 August 2020 to 31 July 2021 and is our current advice for the funding year. We know that providers are working through exceptional circumstances due to coronavirus (COVID-19). We may publish further updates to this guidance document about the impact of coronavirus (COVID-19) on our funding rules as these become clear. We will tell you about any changes in our ESFA Update.

We would like to take this opportunity to thank you for your continued hard work in these difficult times. For further information, please read [this guidance](#).

This document is part of a series of booklets providing Education and Skills Funding Agency (ESFA) Funding guidance for young people for the academic year 2020 to 2021.

- Funding regulations
- Funding rates and formula
- ILR funding returns
- Subcontracting controls (this booklet)

This summary applies to all these booklets and as they are published they will be available on [ESFA funding guidance on GOV.UK](#).

These documents outline the main features of the ESFA funding arrangements for young people in 2020 to 2021 and are an integral part of the ESFA's funding agreements for young people aged 16 to 19 and those aged 19 to 24 with an education, health and care (EHC) plan. All these documents should be read in this context, unless specifically stated otherwise. This is the definitive ESFA guidance for 2020 to 2021 and supersedes any previous funding guidance for young people.

Institutions must take into account the General Data Protection Regulation (GDPR) regulations in respect of the information they retain – particularly when it is personal or sensitive. It is the institution's responsibility to ensure it is fully compliant with these regulations.

The ESFA sets out in its [privacy notice](#) how data is collected and used to perform statutory functions on behalf of the Secretary of State. We will rarely ask for data from you outside of the Individualised Learner Record (ILR) and School Census. But where we do, we will set out clearly what we need and why we need it. We will always request that all personal or sensitive information is sent via a secure method of transfer which is fully compliant with GDPR regulations. You must not send us personal or sensitive information at any other time or in any other way.

For further information or to contact the ESFA, please use our [online enquiry form](#). Maintained schools should contact their local authority.

## What's new?

### Reforms to subcontracting

Earlier this year ESFA ran a consultation seeking views from providers who have an interest in subcontracted delivery to inform our thinking about reforms to subcontracting arrangements. In June we published our response to the consultation exercise [insert link].

Over the next three years we will be implementing a series of reforms that will strengthen ESFA's oversight of the approach to subcontracting in the sector.

We have been clear from the outset that we wish to see a significant reduction in the overall volume of subcontracted delivery in the sector, and that is why we have asked that all providers review their existing subcontracting activity and take steps to reduce that activity across the next 3 years to 2022 to 2023. We will apply a cap on the volume of subcontracting and will take forward work this academic year to establish the right threshold for that cap and timescales for a staged reduction.

For academic year 2020 to 2021, we have:

- set out in [paragraph 4](#) that we require all providers to publish a clear educational rationale for their subcontracting position on their website alongside their management fee structure and a list of subcontracting partners
- clarified in [paragraph 59](#) that the use of brokers to source a subcontracting partner is not permitted and will be treated as a breach of contract/funding agreement

As we have set out in our response to the consultation exercise, the other reforms will be introduced over the next 2 to 3 years. We will publish further details about how those changes will be implemented later this year.

## Introduction

1. This document sets out the additional management controls and procedures required of ESFA-funded institutions over their individual subcontracting arrangements for young people's study programmes. The additional management controls and procedures in this document are compulsory for all directly funded institutions with subcontracting arrangements.
2. Institutions with no subcontracting arrangements do not need to use this document.

## Purpose

3. It is vital that all directly funded organisations must properly monitor and control all subcontracted delivery. They must ensure that safeguarding is rigorously policed, that students enjoy the same entitlements as those learning in schools and colleges and that their education is of high quality.
4. Directly funded institutions should set out in their organisation's strategic aims their reason for subcontracting, which must enhance the quality of their student offer. They are also responsible for the selection and actions of their delivery subcontractors. It is a new requirement that providers should be clear about the educational rationale for their subcontracting position. The rationale should be signed off by governors and boards and published on their website. Alongside this, institutions should also publish their management fee structure and a list of their subcontracting partners. We expect the rationale to meet one or more of the following aims:
  - enhance the opportunities available to young people
  - 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
  - consideration of the impact on individuals who share protected characteristics
5. We expect this information to be published by 31 October 2020. It should be easy to navigate to from the front page of the organisation's education and training web pages.
6. Subcontracting creates additional risks for both institutions and the ESFA. The risk increases when the subcontracted delivery takes place at a distance from the directly funded institution.

7. Therefore directly funded institutions must properly monitor and control all subcontracted delivery of study programmes. One particular concern is how the ESFA assures the proper use of public money when funding is transferred by publicly funded institutions to the independent sector.
8. Directly funded institutions must also make sure that they monitor the subcontracting delivery so that:
  - they ensure students are safeguarded
  - students have full access to the entitlement, including (but not limited to) information about and access to 16 to 19 bursary and other student support funding, information, advice and guidance (IAG) and access to learning support if required
  - the provision is of good quality
  - they ensure that all sites used for the delivery are of suitable quality for teaching and learning for young people
9. Institutions must not make artificial distinctions or distortions when describing delivery arrangements in order to avoid the application of these regulations.
10. Institutions must meet all the requirements set out in this guidance. It is part of the funding arrangements between the ESFA and all directly funded institutions that have subcontracted part of their ESFA-funded provision for young people.
11. All subcontracted provision must comply with the ESFA funding guidance; it applies to subcontracted provision in exactly the same way that it applies to provision by directly funded institutions. Directly funded institutions are responsible for all aspects of provision delivered under subcontracting arrangements. This includes, but is not limited to:
  - eligibility
  - performance
  - safeguarding
  - fee charging – institutions must be clear that public funding is only used to pay for delivering study programmes, and is not used to cover ancillary aspects, such as memberships of sports clubs or theatre groups
12. All institutions receiving ESFA funding must record subcontracted provision in line with the published guidance for the school census and the individualised learner record (ILR) data returns. The ESFA publishes annually a summary of this information including the names of subcontractors and the number of students on subcontracted provision. We now require an additional declaration in respect of subcontracting to support our monitoring arrangements from all institutions that return ILR data in a similar way that we do for other ESFA-funded provision. We

will include the details of how to make the necessary returns in the [ILR funding returns](#) guide.

13. Institutions must have a written contract with their subcontractor. It must set out the respective responsibilities of both the institution and the subcontractor. The contract must entitle the institution to exercise the management controls over the subcontractor's activity, including access by auditors appointed by either the institution or the funding body. Each institution will wish to take its own legal advice before entering into contracts. Paragraphs 31 and 78 to 82 sets out the requirements when contracts are terminated early.
14. When appointing and working with subcontractors, institutions' management must take steps to avoid any conflicts of interest and/or any circumstances (for example, common directorships) which might give rise to an actual or perceived conflict of interest.
15. It is not acceptable for subcontractors or institution staff with a direct or indirect financial interest in the subcontractor to undertake any management control activities. This includes signing time sheets or invoices, as well as organising and/or carrying out monitoring activity or visits to check the subcontractor delivery.
16. The directly funded institution will usually retain part of the study programme funding to cover the cost of managing and administering the contract. The amount of funding must be proportionate to the costs, and must be determined through due diligence and risk assessment processes.

## Definitions

### Direct delivery

17. Direct delivery is when institutions use their own staff in their own buildings. This includes buildings that form part of the institution's own infrastructure, including any that may be rented or leased, either on a long- or short-term basis.

### Subcontracting

18. Subcontracted delivery is provision delivered by a third party organisation with whom the institution directly funded by the ESFA has entered into contractual arrangements for the delivery of a proportion of the education provision funded by the ESFA, and for which payments are dependent on student numbers and/or formula funding values.

## Provision outside scope

19. These regulations do not apply when 2 or more institutions in receipt of direct ESFA funding for provision for young people aged 16 to 19 agree to collaborate with each other in their local delivery arrangements to students. Collaborative arrangements are those where all of the following apply:

- 2 or more directly funded institutions agree to share part of the delivery of education and training to students
- the majority of each student's education and training is delivered by the student's home institution
- the home institution records the student on either the ILR or school census for funding purposes

## Intervention

20. When the ESFA has concerns about a subcontracting arrangement between an institution directly funded by the ESFA and a third party, we will carry out an investigation to determine if the arrangements comply with the detail, spirit and intention of this guidance. The investigation will take into account:

- funding eligibility
- the management and control of the contract
- the welfare of the young people involved
- students' access to the full entitlement of study programmes and student support
- the overall quality of the education and/or training being delivered under the subcontracting arrangement

21. The ESFA has the right to take immediate action during the course of an investigation if we find sufficient evidence of non compliance and to publish the findings of any investigation.

## What steps the ESFA may take

22. The ESFA reserves the right to take a range of actions in accordance with the grant funding agreement or contract for services where institutions are not compliant with the guidance set out in this document and other relevant policy.

23. The action we take can include but is not limited to:

- where in ESFA's assessment there has been a material non compliance with subcontracting rules we reserve the right to take action with the directly funded institution. Where this is a college this may include escalating that college to formal intervention which can include the issue of a Notice to Improve
- require the institution to make an action plan that sets out how they will improve the subcontracted provision within a specified timescale
- remove the student numbers and associated funding from lagged funding allocations for the directly funded institution
- require the institution to discontinue the subcontracting arrangement, either with immediate effect or from the end of the current funding year and make alternative arrangements to deliver the provision

## Failed institutions

24. The DfE will apply its intervention policy and contract management approach as set out in:

- the [college oversight: support and intervention](#) policy
- the guidance on [how ESFA maintains oversight of independent training providers](#)

25. We may take a range of actions when an institution has failed which are set out in these documents and our Grant Agreements and Contracts for Services and other quality thresholds set by DfE or ESFA. The ESFA will consider subcontracted provision under the control of a failed institution to be inadequate. Failed institutions must not enter into any new, or extend existing, ESFA-funded subcontractor arrangements.

## **Insufficient and inappropriate management, monitoring and control**

26. When directly funded institutions do not appropriately manage and monitor subcontracted delivery, the ESFA may intervene even if there are no concerns over the subcontracted provision's quality.

## **Provision of insufficient quality**

27. The ESFA may deem provision to be of insufficient quality either when it does not meet our expected quality standards, or when Ofsted assess it to be inadequate.

## **Ineligible provision within study programmes**

28. When a funded institution records or claims for non-existent or ineligible subcontracted activity, the ESFA will seek recovery of funds paid for the ineligible activity or students. This recovery can include grant-in-aid funding that is not otherwise subject to reconciliation arrangements. Recovery will usually be done through adjusting lagged funding values, but in the case of serious error or irregularity the ESFA may also remove the grant-in-aid relationship and require in-year funding recovery. When institutions record ineligible activity the ESFA can recover any funding associated with the ineligible activity in the current year, and can also recover funds from the 6 previous funding years. This is in accordance with normal public sector accounting rules for the protection of public funds.

29. The ESFA will analyse data on subcontracted delivery to make sure that funding is only claimed once for each student. For further information on this, see the sections on [ESFA-funded young people attending more than one institution](#) and [transferring provision between institutions](#).

## Restrictions on subcontracting

30. We apply additional restrictions to subcontracting by some types of provision and institution.
31. An institution must not subcontract, without written ESFA permission, with any institution or organisation in the following categories. The contract between the directly funded institution and the subcontractor must allow immediate or early termination if these circumstances arise during the contract:
- a subcontractor that is inspected in its own right and found to be inadequate or under-performing by Ofsted
  - a subcontractor that is subject to intervention by the ESFA
  - where the institution is not permitted to recruit 16 to 18 year old students and/or 19 to 24 year old high needs students (HNS), for example, an 11 to 16 school

## Second-level subcontracting

32. Second-level subcontracting is not permitted. This means that subcontractors must not subcontract any part of the delivery of ESFA-funded provision to other organisations or self-employed individuals. For example, if the trainers used normally provide their services as self-employed contractors, the subcontractor must create an employment relationship with them. Institutions must pay particular attention to this requirement if the subcontracted provision is being delivered alongside student membership of a sports academy or similar other organisation.
33. Provision must be delivered by the subcontractor's directly employed staff. If volunteers are delivering provision, the subcontractor must have control as if they were employed staff.

## Distant subcontracted delivery within study programmes

34. In exceptional circumstances only, institutions may make subcontracting arrangements for delivery that is outside their normal recruitment area. ('Normal recruitment area' is defined in the [Funding regulations](#) guidance). Such 'distance subcontracting' arrangements carry more risk and it is inherently more difficult for institutions to exercise the appropriate level of control and to safeguard students. Institutions must remember that they are responsible for the young people enrolled on subcontracted provision and for the proper use of the public funding they claim.

35. It may be appropriate for institutions to make distance subcontracting arrangements for the whole of students' programmes; however, these circumstances will be rare. Schools and academies must not subcontract whole study programmes under any circumstances, as set out in paragraphs 38 to 43. We are considering whether to put in place more formal requirements for institutions to agree distance subcontracting arrangements with the ESFA in future years.
36. When FE institutions make distance subcontracting arrangements, they must exercise the same procedures and controls as for local subcontracting. They must also:
- have auditable evidence of the exceptional circumstances that make the distance subcontracting necessary
  - consider the funding implications and assure itself that the arrangement will comply with all guidance in advance of any recruitment (for example, the principles of funding and the design of study programmes set out in Funding regulations)
  - keep evidence that they are properly and effectively monitoring and controlling the provision and safeguarding the students as set out in this guidance
37. ESFA's auditors will do sample checks of institutions' distance subcontracting arrangements. When institutions are not compliant with this or any other ESFA guidance, we will take action as set out in this document's intervention section, and/or in the contract/funding agreement clauses.
38. ESFA will consider a range of factors when deciding whether distance subcontracting arrangements are within the letter and the spirit of guidance, including but not limited to:
- the extent to which the directly funded institution is involved in delivery (for example teaching part of the programme or just providing financial and quality assurance)
  - whether the amount of funding retained by the directly funded institution is proportionate to the costs they incur in the management and administration of the contract
  - the extent to which the provision being made available is already available via other directly funded institutions in the locality and is accessible to students in the area where the subcontract operates and why local provision is not meeting the students' needs
  - the extent to which a gap in the provision of the type to be delivered under the proposed subcontract has been identified or supported by the local authority or an employer

- the location of delivery and the nature of travel to learn/travel to work patterns
- the extent of student contact with the directly funded institution

## Maintained schools and academies

39. Schools and academies must not subcontract for students' whole programmes. This is because these institutions must comply with the Education (Pupil Registration) (England) Regulations 2006 and the underlying primary legislation, which requires schools to maintain a register of all pupils at the school. These regulations cover all pupils at the school (including those up to the age of 18). Only pupils at the school can be added to a school's roll. Section 3 of the Education Act 1996 defines a pupil as someone "for whom education is being provided at the school".
40. Legally, being a pupil and attending a school are based on physical presence. Although schools have powers to arrange some educational activities away from their premises, these are not intended to allow the whole of a pupil's education to be delivered somewhere, and by someone, other than the school. This means that all whole programme subcontracted provision is in breach of the regulations.
41. Schools and academies can therefore only subcontract provision for pupils who
- attend the institution for at least one element of their programme throughout the academic year
  - attend the school or academy at least once a week for 19 to 25 high needs provision
42. In 2014, the DfE legislated to restrict local authorities in their funding of special schools in respect of 19 to 25 year old students. This restriction effectively prevents special schools from routinely enrolling young people aged 19 to 25. This was in support of the objective of the SEND reforms to prepare young people for adulthood. Allowing students to remain in a single setting from age 5 to 25 could severely prejudice their chances of preparing for employment and independent living, and would simply push back the 'cliff edge' described by many parents when their children leave education. Requiring young people to move into further education if their Education, Health and Care (EHC) plans continue post-19 is far more likely to prepare them for adulthood. This provision, where appropriate, must include opportunities to experience the world of work, develop independent living skills and make independent choices and decisions in an adult context.
43. We do not expect colleges to enter into subcontracting arrangements with special schools for the whole, or for a substantial proportion of a students' programme where they are aged 19 to 25. Special schools have the option to set up a legally

and financially separate entity to make provision for 19 to 25 year olds as advised in the [High needs funding: operational guide](#).

44. Arrangements may continue between colleges and special schools for part of a students' programme where appropriate, for example where this is serving the student's educational needs, or to access a sensory room or speech and language therapy. Such arrangements must not be for more than one day per week.

45. We will also continue to allow students to stay on for another year at a special school to finish a course of secondary education started before they were 18.

## **Other institutions**

46. No additional restrictions apply to other types of institution.

# Controls and procedures

## Advice for accounting officers

47. Institutions' management and governors must make sure that:

- subcontracted delivery arrangements comply with the evidence requirements set out in companion document [Funding regulations](#) (section 6: evidence of student existence and eligibility)
- the controls set out in this document are in place and operating for all subcontractor arrangements
- they are making appropriate systematic checks to ensure that students enrolled by subcontractors on their behalf and recorded in their records are correctly described in their own student record system and were actually receiving the scheduled provision described
- money from the 16 to 19 Bursary Fund is distributed in accordance with the relevant guidance, and is not used to pay for activity, equipment, or memberships that are not necessary for the study programme
- subcontracted delivery is of good quality
- students are safeguarded and are able to access financial and learning support in the same way as those attending the institution

48. Institutions must satisfy themselves that they have carried out appropriately the detailed guidance in this document in the '[Controls and procedures](#)' section. Lead institutions must ensure that there is no risk of double funding for subcontractors with multiple subcontracts with directly funded institutions.

## Procurement

49. All institutions must ensure that they comply with current and relevant procurement regulations. Each institution must ensure that they select their subcontractor(s) fairly and that they have sufficient capacity, capability, quality and business standing to deliver the provision that is being subcontracted. All publicly funded bodies must ensure they comply with relevant UK and European regulations when procuring the services of a subcontractor.

50. Institutions must take all necessary steps to verify any actual or perceived conflicts of interests in potential subcontractors, and eliminate such subcontractors from the process.

51. How institutions choose to meet these procurement requirements and monitor them is a matter for them to determine. However, the ESFA reserves the right to ask all institutions for additional evidence that support their decisions within this process to resolve any eligibility issues.

52. Institutions are responsible for checking the details provided by the successful subcontractor and neither the ESFA nor the Secretary of State will accept any liability in respect of the directly funded institution procurement of any subcontractor.

## Due diligence

53. Institutions are responsible for carrying out their own due diligence to manage the reputational and other risks of contracting with the proposed subcontractor. This process must consider non-financial as well as financial issues. Institutions' governing bodies must determine the nature and extent of these procedures but in financial terms the ESFA expects them to include the steps set out below.

54. Institutions must only award contracts to registered companies or charities. The status of companies must be recorded as 'active' on the Companies House register.

55. Institutions must assess the financial health of the proposed subcontractor on at least an annual basis to ensure that they have the financial standing and capacity to deliver the subcontract. This will involve obtaining and reviewing their statutory accounts (financial statements), and possible reference to credit agency checks. Institutions must exercise extreme caution where a credit agency limit is low, or where the company has high levels of borrowing or poor indicators of financial solvency.

56. Institutions must not contract with companies with any of the following:

- risk warnings (that is, above average risk warning from an agency)
- legal notices (that is, intention to dissolve, winding up petition/order, compulsory or voluntary liquidation and so forth)
- overdue statutory accounts

57. Institutions must not contract with brand new companies who:

- are yet to submit their first statutory accounts, unless they are able to thoroughly verify the new company's financial capacity
- have a legal relationship with a company falling into categories listed above

58. To gather information about the proposed subcontractor, institutions may wish to refer to our Register of Training Organisations. This provides some assurance that an organisation included on the register has successfully passed a due diligence process and has had their capability to deliver programmes assessed by another funding body.

## Use of brokers

59. By brokers we mean where a third-party matches, for a fee, a provider with an unused allocation with a provider that can secure enrolments of learners to utilise it. Use of brokers is not permitted. We have strengthened our levers to act and will do so where we find cases of provision being subject to brokerage. We have added clauses within our grant funding agreements and contracts for 2020 to 2021 to make the use of brokers with ESFA funds a serious breach of the agreements.

## Controls over students, tutors and provision

60. The directly funded institution must be able to demonstrate that it exercises all the following key controls:

- it can enrol or reject students as it would do if the students were to be taught on its own site
- students sign a learning agreement at the time of enrolment; the agreement must reflect the outcome of initial guidance and assessment for an individual student and set out their study programme and any learning support to be provided
- student eligibility for ESFA funding is confirmed through an enrolment form and/or learning agreement, which must include the name and logo of the directly funded institution, and which is signed by the student at the start of their programme
- a learning programme and its means of delivery has been clearly specified by the institution
- there are arrangements for assessing the progress of individual students
- there are procedures for the institution to regularly monitor the delivery of programmes provided in its name throughout the period of the programme

## Controls over qualifications and curriculum

61. In most circumstances, the directly funded institution is the centre approved by the awarding body for the qualifications being offered by means of subcontracted provision.

62. When the subcontractor is the approved centre, it is usually because the subcontracted provision is in a curriculum area not offered by the directly funded institution. Therefore the institution must also employ an independent person with appropriate expertise in the curriculum area to provide advice on subcontracted arrangements and undertake the necessary checks on the operation of the arrangements, including quality checks. This person must not have a financial relationship with the subcontracted firm or organisation.

63. When the subcontractor is the centre approved by the awarding body for the qualifications being delivered and funded through the subcontracting arrangements, the directly funded institution must be able to demonstrate that it can exercise effective control over the provision. It must monitor the activities of the approved centre with regard to its relationship with the awarding body. It must exercise control over, and make appropriate arrangements for, quality assuring the provision, and be able to evidence these.

## **Monitoring (control) visits and spot-checks within study programmes**

64. Institutions must address all the monitoring, management and control issues over their subcontracted delivery set out in this document for themselves.

65. Monitoring must include:

- checks on eligibility of provision
- direct observation of the initial guidance and assessment process
- the delivery of the study programmes throughout the period of delivery, which may include reviewing examples of student work

66. Spot-check visits must be carried out regularly, taking account of the pattern of provision so that they are applied to a significant proportion of students. It is best practice for institutions to carry out some checks at enrolment.

67. Spot-check visits must involve the institution making unannounced visits in-year to each subcontractor. The checks must include all sites (any place where delivery takes place) for each subcontractor, rather than simply revisiting the same site. The checks must be proportionate to the risk and volume of the provision and contract. They must also be undertaken throughout the year at times that are proportionate to the periods in which funding is being claimed.

68. Institutions must ensure that they meet and interview a sample of students and staff regularly. Institutions must ask students to name the institution they are enrolled at, and must also ask if they are at the same time, or have been recently, a student at another ESFA-funded institution. Other evidence sought must include:

- marketing material
- copies of registers
- learning agreements
- registration documents for awarding bodies
- visit notes from external moderators
- evidence of certification

- evidence of safeguarding activities

69. Institutions must use systematic checks to confirm that the provision is being delivered and the location of delivery is consistent with their expectations and records. The number and characteristics of students must accord with the institution's expectations and records. For example, they must investigate any obvious mismatch between the apparent and expected age of the students.

70. The ESFA-funded institution must carry out an investigation at their own cost if there is any evidence of a subcontractor having irregular financial or delivery activity. They must report the outcome of the investigation, in writing, to the ESFA within 10 days of the investigation ending.

71. Monitoring activities must be similar to those considered appropriate for external verification or moderation, sufficient to ensure that student progress can be monitored, and used to gather regular student feedback.

## **Subcontractors with contracts with multiple institutions**

72. Directly funded institutions must establish which of their subcontractors work with other directly funded ESFA institutions. Institutions with subcontracted provision must use the advice below to reduce their risk of recording ineligible provision. If double funding occurs then the ESFA will treat the distant delivery as ineligible for funding and will take steps as set out in the intervention section.

73. Institutions must make sure that they are the only institution claiming young people's funding for students, to avoid the ESFA funding students or elements of their programme more than once. Students must not be enrolled at more than one directly funded ESFA institution.

74. One 'home' institution must claim all the funding for an ESFA-funded student. When a student is attending different institutions for different components of their programme of study, the home institution must record all these components, and indicate on the individualised learner record or school census which elements are delivered via a subcontracting arrangement (see paragraphs 18 and 19).

75. All individual students must have the correct unique learner number recorded.

76. The best practice for the control activity is for subcontractors to report on a regular basis to each ESFA directly funded institution with which it has a subcontract. The report should confirm the volume and value of all contracts, and to confirm that each individual student only has funding claimed by one institution. Accurate recording, use and exchange of unique learner numbers (ULNs) makes this work simpler.

77. When funding audit work is required, the institution with the largest contract (or the longest historical contract) will usually be regarded by the ESFA as having the lead responsibility for the study programme provision. For these purposes, institutions must treat all companies or organisations that are in the same common ownership or control as one subcontractor.

## Transferring provision between institutions

78. When a directly funded institution ends a subcontracting arrangement, they must inform the ESFA, so that we are assured there is no negative impact on students and can adjust funding allocations as necessary.

79. If the directly funded institution ends a subcontracting arrangement and the subcontractor transfers the provision to a different directly funded institution, the ESFA may remove one or both institutions from the lagged allocation process to ensure that the funding follows the student. The decision on whether to make an adjustment to lagged numbers will depend on the scale of the subcontracted provision, the timing and process followed in ceasing the contract, and the nature of any resulting gap.

80. We will then consider an evidence-based business case from the new directly funded institution to fund planned new starts.

81. When an institution ends a subcontracting arrangement, they must make sure there is continuity of provision for those students already on the programme and that there is no gap in provision created as a result. Directly funded institutions are responsible for students on subcontracted provision. They must make sure that existing students are funded to the end of their programme either by a phased withdrawal from the relationship or by transferring funded numbers and the funding to another institution that has agreed to pick up the continuing students.

82. If an institution plans to stop a subcontracting arrangement, they must give the subcontractor sufficient notice. This must be at least 3 months, but may need to be longer. The directly funded institution must work with the subcontractor to put plans in place to ensure that students who are part way through their programme are supported to complete.

## Prevent duty

83. The [Prevent duty](#) applies to subcontracted provision. It requires institutions, to have due regard to the need to prevent people from being drawn into terrorism. All further education and independent learning providers must comply with relevant legislation and any statutory responsibilities associated with the delivery

of education and safeguarding of students, and this includes students receiving provision under a subcontracting arrangement.



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