

Guidance Termination of ESFA funding agreements: guidance for providers

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1. Guidance for providers

Your funding agreements with ESFA clearly set out the circumstances in which they may be terminated. These circumstances include, but are not restricted to:

- provider request
- insolvency event
- Ofsted inspections/monitoring visits
- removal from the Register of Apprenticeship Training Providers (RoATP)
- serious breach of contract
- financial health or control
- change of control / ownership

If your funding agreements with ESFA are terminated, they, along with the published [ESFA oversight of Independent Training Providers: operational guidance](#), confirm details of exit strategies and exit plans that you should have in place that need to be complied with.

Your funding agreements with ESFA, along with published funding rules, take precedence over this guidance.

2. What providers can expect from ESFA if their funding agreements are terminated

ESFA will:

- issue a written, formal notice of termination, setting out the reasons for the termination, and confirming the notice period that applies
- invite representatives of the provider to an [exit meeting](#), if required, to discuss the implications of the termination for all parties concerned, and to confirm roles and responsibilities of any actions that may be required
- notify relevant stakeholders of the termination, as appropriate (including, but not restricted to, National Apprenticeship Service, Ofsted, Student Loans Company, subcontractors, providers that you subcontract delivery on behalf of)
- write to learners and employers affected, as appropriate, advising of the implications and setting out the support that is available for them
- work with employers (for apprenticeship provision) and learners to support them in identifying suitable, alternative, high quality provision
- assign a specific point of contact at ESFA to help with queries relating to the termination of your funding agreements

3. What ESFA expects of providers if their funding agreements are terminated

ESFA expects full co-operation from providers where funding agreements are terminated. You should continue to work with ESFA to minimise any disruption to learners and employers affected. This includes co-operating in the transfer of learners to a new provider, even if this is prior to the actual termination date of a funding agreement where you cannot complete learners in the notice period given.

Your funding agreements with ESFA state that you must not share any information about learners with another organisation, unless the ESFA provides written authorisation for you to do so.

You must not seek to source alternative provision for learners or employers affected when any of your funding agreements with ESFA are terminated. This could result in a breach of contract for any new provider appointed. ESFA will work with learners and employers to source suitable alternative training provision where necessary.

If any of your funding agreements with ESFA are terminated, your responsibilities include:

- attending an [exit meeting](#), if requested, with representatives of ESFA
- continuing to support learners affected during the notice period, either until suitable alternative provision has been secured (by the employer or ESFA), or the termination date is reached
- providing an up-to-date summary to ESFA on the progress of all learners affected, confirming:
 - which learners can be completed within the notice period (or prior to the termination date), and which learners will need to transfer to other alternative provision to finish their programme
 - any issues we may need to be aware of relating to specific learners
- ensuring all learners have full copies of all their learning evidence to date, including any certificates relating to their achievement to date which an awarding organisation has sent to you, and immediate access to e-portfolios with the ability to download copies of all evidence required
- retaining all documents in relation to evidence of delivery as per retention of document clauses within your funding agreements and the published guidance on GOV.UK regarding [record keeping and retention information for training providers](#) (unless your organisation ceases to trade, in which case you, or your legally appointed representatives, shall co-operate with ESFA (and partner organisations as appropriate) in the secure recording (indexing and labelling) and collection of files)
- making available any learner files/records for audit purposes prior to or after a termination date
- co-operating with ESFA with any requests for information
- notifying relevant stakeholders (such as awarding organisations, end-point assessment organisations (EPAOs)) that some or all your funding agreements with ESFA have been terminated
- supporting ESFA with queries from learners, employers, and other stakeholders (such as awarding organisations, EPAOs, subcontractors, etc)
- continuing to submit timely and accurate Individual Learner Records (ILR) data returns and agree a date for final ILR submission, in which any remaining continuing learners must be recorded as either withdrawn from their last day of learning, or completed, as appropriate
- ensuring data on the Student Loans Company's ["Learning Provider Portal"](#) is accurate and up to date for all your advanced learner loans-funded learners
- providing a suitable point of contact within the organisation for ESFA to liaise with directly regarding the termination of your funding agreements, resolution of general and data queries and to support with the transfer of learners

4. What providers can expect during an exit meeting with ESFA

ESFA will arrange an exit meeting with you if your funding agreements are terminated and learners are affected. There will not be an opportunity during an exit meeting to dispute or challenge the decision to terminate. Any disputes or challenges to decisions made should be addressed in writing to your territorial team account manager.

The purpose of the meeting is to:

- confirm the decision reached to terminate funding agreements
- ensure you are aware of your responsibilities and any subsequent actions required following the decision to terminate your funding agreements
- ensure the best outcome for learners whilst keeping disruption to their learning to a minimum
- confirm the extent of delivery you have undertaken to date
- identify any niche provision and/or specific learner needs/characteristics that need to be accommodated
- respond to any questions you may have

The meeting will take place by telephone or online with representatives from ESFA. ESFA may invite representatives from other stakeholders if appropriate (such as from the Student Loans Company).

At least one person attending the meeting for the provider must be an officer of the company who has authority to make decisions on behalf of your organisation (such as the Chief Executive Officer or an officially named director).

In the event of insolvency proceedings, ESFA will arrange an exit meeting with any legally appointed representatives (insolvency practitioners, such as administrators or liquidators).

ESFA will provide you with an agenda prior to the meeting. The agenda may include the following items for discussion (this list is not exhaustive and for guidance only):

- welcome and introductions (including introduction of ESFA case-owner)
- purpose of the meeting and confirmation of decision made
- confirmation of current delivery (learners, employers, subcontractors)
- confirmation of ESFA processes
- review of data and payments
- immediate actions required and next steps
- subsequent review meetings

Minutes and actions from the meeting will be shared with all attendees. Following the exit meeting, ESFA will arrange regular review meetings with the provider as required.

5. Guidance for providers wishing to support learners and employers affected by the termination of another provider's funding agreements

If you are approached by a learner, employer, or any other party about transferring learners affected by a training provider having had their funding agreements with ESFA terminated, you should contact ESFA before proceeding with any transfer.

You should also consider the following points before agreeing to any such transfers:

- you must have in place an appropriate funding agreement with ESFA relevant to the funding stream that the learner's programme is funded by
- if a learner's programme is funded through a contract for services, you must have sufficient headroom within your corresponding allocations to accommodate the additional learner(s)
- you must accurately account for and record recognition of prior learning
- you must be approved by the same, or an appropriate alternative, awarding organisation, to deliver the same qualification(s) that the learner started

For apprenticeships, in addition to the above, you:

- need to agree a new total negotiated price (TNP) with the employer for the balance of delivery remaining, including the cost of End-Point Assessment (EPA) where applicable
- need to put in place a new contract for service with the employer
- must record the learner as a re-start (see Provider Support Manual), not a new start in your ILR
- must continue to deliver the same programme that the learner started
- must not transfer the learner from a framework to a standard, or vice versa, without ESFA and employer approval
- must ensure that minimum duration criteria are met (accounting for time spent on programme with any previous providers)
- can only claim the balance of funds remaining within the funding band maximum (FBM) for the apprenticeship from ESFA, accounting for funds already paid to other providers (the FBM applies across all instances of the same programme)

Providers that have had their funding agreements with ESFA terminated must not share any information about learners or apprentices without written permission from ESFA to do so. If you employ former employees of another provider, they must not share any learner or apprentice information with you without gaining prior permission from ESFA.

6. Guidance for subcontractors of lead providers that have had their funding agreements with ESFA terminated

If you are a [subcontractor](#), any delivery you undertake on behalf of a lead provider will be affected if the lead provider's funding agreements with ESFA are terminated.

If a lead provider's funding agreements with ESFA are terminated, as well as writing to learners and employers, ESFA will also write to any subcontractors affected to notify them of the implications and any actions that may be required.

ESFA will work with the lead provider, and their subcontractors where appropriate, to ensure that learners affected can continue with their programme. Options available for consideration by ESFA include, but are not limited to:

- allowing existing delivery arrangements to continue if a learner can complete their programme during the notice period given (subject to agreement between all existing parties, as well as review and approval by ESFA)
- allowing the subcontractor to deliver the remainder of the programme directly (subject to the subcontractor having the appropriate funding agreements with ESFA already in place, as well as review and approval by ESFA)
- allowing the transfer of affected learners to another lead provider that the subcontractor has an existing subcontracting arrangement in place with, and for the subcontractor to continue delivery as a subcontractor to the new lead provider (subject to the agreement of all parties concerned, assurance that the delivery will continue to adhere to funding rules, and ESFA review and approval); or
- to transfer the affected learners to other alternative provider(s), who will help the learners complete their programmes directly

Subcontractors must not implement any of the options above without first discussing them with ESFA. Subcontractors must not seek to source alternative provision for any learners affected. Learner transfers cannot take place until they have been reviewed and approved by ESFA.

Any subcontracting relationship that a subcontractor has with a lead provider is a commercial arrangement. ESFA is not responsible for ensuring subcontractors receive payments for delivery they undertake on behalf of a lead provider. Any enquiries a subcontractor may have about outstanding payments earned should be made to the lead provider, or their legally appointed representatives where applicable.

If you are the lead provider and a provider that subcontractors deliver on your behalf has their funding agreements terminated, it remains your responsibility to ensure that delivery can continue. You must ensure that delivery continues either directly, or by arranging for another provider to subcontract delivery on your behalf (subject to continued compliance with the relevant funding rules).

7. Contact details for further guidance

If you need additional support regarding apprenticeships, please contact [Apprenticeship Support](#).

For all other queries, you can complete the [ESFA enquiry form](#) which will be redirected to the appropriate team.

8. Related published guidance, policies, and useful links

- [ESFA funding agreements and contracts](#)
- [ESFA Apprenticeship Agreement for Training Providers \(for the provision of apprenticeship training\)](#)
- [Remove from register to deliver apprenticeship training](#)
- [Public funding to deliver apprenticeship training](#)
- [ESFA policy on funding higher risk organisations and subcontractors](#)
- [ESFA oversight of Independent Training Providers: operational guidance](#)
- [Apprenticeship funding rules](#)
- [ESFA Funding Rules for 2020 to 2021](#)
- [Apprenticeship end-point assessments - rules and guidance](#)
- [Apprenticeship gateway and resits for end-point assessment \(EPA\)](#)
- [Apprentices that have been made redundant](#)

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