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Guidance

Governance and subcontracting in post-16 education and training

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Applies to England

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This guidance is for those responsible for the governance in post-16 education and training providers. This could be:

- college governors and boards
- an executive board of directors
- an audit committee

It sets out core activities to help with the:

- oversight of the subcontracting policy, rationale and strategy
- management of the lead provider

It is important that you take an active role and consider all these points. We will assess this as part of the [subcontracting standards](#).

Governance responsibilities

Your governance responsibilities include:

- setting and communicating your provider's strategy, goals, and, where relevant, educational character
- holding executive leaders to account for:
 - educational performance and quality
 - the performance of staff
- exercising effective control to ensure funds and assets are protected, and legal obligations are met

Having an oversight of subcontracting activity is an integral part of these core

functions.

The guidance on [subcontracting for the first time](#) explains more about:

- what subcontracting is and how it works
- the roles and responsibilities of the lead provider and subcontractor

Rationale for subcontracting

Subcontracted provision should be an integral part of the lead provider's curriculum offer. You should make sure that curriculum directors have appropriate involvement and oversight.

Subcontracted learners are learners of the lead provider. Make sure the offer for them is as carefully constructed and scrutinised as for learners attending the lead provider.

Subcontracted activity should meet one of the following:

- 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

Check that the lead provider's rationale for subcontracting shows that:

- it provides a more coherent curriculum offer to the community and employers
- the tender specification meets their needs
- subcontracting would support the lead provider's mission statement and strategic objectives
- the proposed subcontracting would fill gaps in the lead provider's prospectus

The lead provider should not consider subcontracting just for financial reasons.

Considering risk

Subcontracted provision carries an inherently higher risk compared to provision delivered on the provider's premises by employees of the provider. There should be appropriately recorded consideration of risks.

The risks increase where subcontracted provision is:

- delivered away from the organisation's main premises – and it increases at further distances
- for the whole of a learner's programme of learning activity

Setting the strategy

Lead providers have to review their subcontracting strategy and rationale annually. You should play a key role in this process.

The strategy should align to the lead provider's strategic and operational objectives.

Signing off the funding

You should understand and sign off on the amount of funding the lead provider will retain.

There should be a clear rationale and calculation for the percentage of funding they are retaining for the management and oversight of subcontracted provision. This may vary from one subcontractor to another. It may also depend on the amount of administration and oversight required.

We may challenge where the funding retained exceeds 20% and offers little value.

Selection of subcontractors

We expect subcontracted provision to arise from a need identified by the lead provider. This should form part of the strategy discussion and agreement on the tender specification.

Before the subcontractor starts delivering the provision, check with the lead provider that:

- they selected the subcontractor as part of a fair and transparent competition
- the criteria they used for selection established the subcontractor's capacity and capability
- the subcontractor can meet all the conditions set out in the subcontracting contract
- they conducted appropriate due diligence and financial health checks
- the subcontractor will only recruit learners once the written agreement with the lead provider is in place

You should also ensure the lead provider has sufficient staff capacity and capability in place to manage the contracts. The staff managing the contracts should have:

- a detailed knowledge of:
 - the contract and other relevant issues, such as service level agreements
 - requirements in line with our funding agreements, funding rules and ongoing supplier performance
- appropriate contract management skills
- general commercial awareness and expertise
- access to relevant training and development
- the appropriate level of delegated authority to manage the contract effectively

Assurance checks on subcontracted provision

All subcontracting must be appropriately recorded in the individualised learner record. The lead provider should also declare any subcontracting to us at least twice a year via the subcontractor declarations. You should check that all subcontracting returns are accurate.

You should receive regular reports about subcontracted provision at meetings at least quarterly. Reports should include details about:

- the number of learners recruited and retained
- the qualifications being undertaken
- key performance indicators (KPIs) including results and progression of learners

- how the executive is exercising oversight of delivery and managing the contract
- payments made to subcontractors, including subcontracting income

You should look at the overall volume of subcontracted delivery in financial terms as part of your financial oversight. Make sure it is a reasonable proportion of total delivery and note the subcontracting threshold of 25%. You need to understand the lead provider's dependency on subcontracting and the financial implications of that. Check the lead provider has:

- proportionate oversight of the subcontractor
- confirmed that:
 - the subcontractor has safeguarding processes in place
 - learners can access financial and learning support in the same way as those attending their setting
- clear processes to handle operational problems and resolve issues
- an identified lead in their senior management team for subcontracting

Annual review of subcontracting

You should work with the lead provider on a year-end review of subcontracted activity. This review should look at:

- the performance of the subcontractor
- the success rates of subcontracted learners
- data on learners' progression
- if it still meets the subcontracting rationale

This review should then feed into an annual update of:

- the subcontracting strategy and rationale
- any existing arrangements

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