

# Insight

Insight 22 September 2024

## Subcontractual arrangements in higher education

### Introduction

A **subcontractual arrangement** is when a university or college allows another organisation to deliver all or part of a higher education course on its behalf.<sup>1</sup> These are also known as subcontractual partnerships, franchised arrangements or franchising. Many universities and colleges in England are involved in such arrangements,

some involving large numbers of students. This brief looks at such arrangements within England, rather than with organisations overseas.<sup>2</sup>

Subcontractual arrangements can offer practical benefits for students in specialised areas, and a different route into higher education for some who might find more traditional approaches less accessible.

### Terminology

In a subcontractual partnership, students are registered at and receive their qualification from the **lead provider** – in this context, a university or college registered with the OfS – but are taught for some or all of their course at another institution – the **delivery partner**, which might be registered or unregistered with the OfS.

The **lead provider** retains responsibility for ensuring that regulatory requirements are met for all such students, just as it must for those it teaches directly. The **delivery partner**, if registered with the OfS, is also responsible for meeting regulatory requirements for all its higher education provision, including teaching subcontracted to it.

In both cases this includes ensuring that any subcontracted courses meet the requirements set out in the OfS's regulatory framework, in terms of high quality.<sup>3</sup> It also includes taking all reasonable steps to deliver the provisions of an approved access and participation plan, including providing financial support for eligible students.

### Summary

Many universities and colleges in England subcontract some of their teaching to external organisations. Not all of these organisations are registered higher education providers. While this can bring benefits, we consider that business models that rely heavily on subcontractual arrangements also represent increased risk. Unless managed actively and carefully, such arrangements can negatively impact students, taxpayers, the reputation of English higher education and the university or college itself. This Insight brief examines the nature of such arrangements and the risks they carry, and suggests ways these risks may be mitigated by better management and oversight. It does not constitute legal or regulatory advice.

The Office for Students is the independent regulator of higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers. We regulate to promote quality, choice, competition and value for money in higher education, with a particular remit to ensure access, success and progression for underrepresented and disadvantaged groups of students.

However, all students are entitled to be treated fairly, receive a high quality education and get the outcomes they deserve, and there is evidence that this is not always true for students in such arrangements.

At the Office for Students (OfS), we have increased our focus on these arrangements. This is to ensure that universities and colleges have robust governance and oversight of these arrangements, in the interests of ensuring positive outcomes for students and taxpayers, and the reputation of the higher education sector.

This Insight brief draws on the data we hold as England's higher education regulator, and our unique access to the institutions in the higher education sector. It sets out the key risks we recognise in relation to subcontractual arrangements, shares examples of the types of issues and practices that have raised concerns, and advises on the importance of effective management and governance in mitigating against them. We discuss how the OfS's regulatory framework applies to subcontractual arrangements and the regulatory action we are taking, and set out some key considerations for effective practice.

We invite leaders in universities and colleges that already have subcontractual arrangements, or are considering entering them, to consider the suggestions in this brief on how to ensure effective governance and oversight. While universities and colleges must contact us if any material concerns arise with a subcontractual partnership, we can also advise at an earlier stage, including before an arrangement is made.

## What are subcontractual arrangements?

Many universities and colleges registered with the OfS are involved in subcontractual arrangements, as either lead providers or delivery partners.<sup>4</sup> In 2022-23, there were 110 registered

lead providers with around 365 delivery partners. Just under a third (118) of the latter were registered with the OfS.

In these arrangements, students pay tuition fees to the lead provider, either directly or via the Student Loans Company (SLC). The lead provider retains a percentage, passing the remainder of the tuition fees to the delivery partner. Since 2019-20, we have seen the number of students taught in these arrangements double, to over 138,000 in 2022-23 – over 5 per cent of students in the sector.<sup>5</sup>

62 per cent of students taught under subcontractual arrangements in 2022-23 were studying business and management courses.<sup>6</sup> It should be noted that business and management courses represent the highest student numbers in any given subject area across higher education, accounting for 21 per cent of undergraduate and postgraduate students in 2022-23.<sup>7</sup>

To remain registered with the OfS and draw on public funding via student loans, universities and colleges must meet a number of conditions of registration, which apply in relation to all higher education courses and all students registered on them. We do not have a role in approving the arrangements that universities and colleges enter into with third parties. However, our regulatory framework applies to subcontractual arrangements, and a lead provider is responsible for making sure that all conditions of registration are met in such arrangements. The delivery partner, if registered with the OfS, also has responsibility for this.

## The importance of good management and governance

There can be real benefits in delivering higher education through subcontractual arrangements. Some of the more striking examples we have seen of such arrangements leading to strong positive outcomes include collaborations with performing arts and media colleges, and further education and sixth form colleges.

Subcontractual arrangements can also provide value where a lead provider wants to deliver a high quality specialist course for students in vocational subjects in a particular context such as a hospital or police facility, which may be some distance from its own campus. Some such arrangements involve delivery partners that are offering higher education in addition to their primary role – for example NHS Trusts, agencies overseeing law enforcement, some further education colleges, early years and youth organisations, religious institutions and sports organisations. Subcontractual arrangements make this more straightforward for them, as the lead provider retains overall regulatory responsibility for its students.

However, over time we have seen that the increase in subcontractual arrangements is being driven primarily by students taught by organisations delivering business and management courses, rather than more specialist provision. A previous Insight brief on navigating financial challenges noted that entering into subcontractual arrangements as a lead provider might appear an attractive option to universities and colleges facing difficulties and wishing to generate income by growing student numbers.<sup>8</sup>

The data and intelligence we hold suggest that this has been at least part of the motivation for some lead providers. In some cases there has been an exponential growth in student numbers in subcontractual partnerships over the last few years, with some lead providers now teaching more students through these arrangements than directly on their own campuses. Among other potential concerns, this raises questions about the direction of travel for the lead provider's own strategic identity, aims and objectives.

Without appropriate oversight of these arrangements, the arm's length nature of delivery presents significant risks to students, taxpayers and the higher education sector, which

are discussed below. These risks are increased when one of these factors applies:

- The lead provider has subcontractual arrangements with multiple delivery partners.
- Such arrangements involve a large number (for example, more than 1,000) of the lead provider's students.
- The students involved are a significant proportion of those the lead provider registers.

It is therefore essential that lead providers take steps to ensure that they are meeting our regulatory requirements and their responsibilities in relation to students in these arrangements. These steps should include:

- Undertaking robust, expert and independent due diligence before entering any partnership
- Agreeing clear and documented strategic objectives for these partnerships.
- Undertaking a clear and documented assessment of the risks these partnerships present, and the mitigations the lead provider is putting in place to reduce them.
- Developing and acting on a clear and effective plan to review the value and operation of partnerships regularly, and if necessary, end them.
- Developing a clear and effective plan to protect students' interests in the event that a partnership ends, so they can continue their education elsewhere without unnecessary disruption.
- Taking steps to understand any risks to equality of opportunity that students on subcontractual courses

may face, and ensuring that current and future access and participation plans adequately address them.

We also expect clear reporting structures and delegations to be in place, to ensure clarity about decision-making for partnership activity. These structures should include:

- Identification and management of conflicts of interest between the lead provider and delivery partner.
- Regular independent audits of subcontractual arrangements informed by the assessment of risk and the data supplied by partners.
- Ways of ensuring compliance with the OfS's reporting requirements, including those for reportable events and notifications, and of ensuring that the data reported to us and to the SLC is robust and accurate.
- Mechanisms to ensure that any complaints about a partnership are reported to the lead provider by the delivery partner and appropriately escalated.

It is essential that governing bodies and senior teams in lead providers have the skills needed to manage subcontractual arrangements effectively throughout their lifecycle. This includes appropriate expertise to enable effective scrutiny and assessment of the business models of partners and the benefits and risks that these present to the lead provider, the delivery partner, and the students involved.

To achieve this, a lead provider should ensure that its senior team and governing body include members with the necessary business background to engage competitively in such an arena. This includes specific skills in the areas of strategy, financial oversight, commercial practice, risk, internal control and

audit. We have seen cases where the business and commercial skills of a delivery partner are not matched by those of its lead provider, leading to a lack of understanding of the delivery provider's motivations and practices.

Where a lead provider identifies skill gaps in its governing body or senior teams, steps should be taken to address these through recruitment or procurement of consultants as appropriate. Options might include:

- Reviewing the composition of the board, and taking steps to ensure it reflects the skills needed for this type of business model. This may require engagement with the appropriate body (usually the Privy Council or Charity Commission) to change governing documents where this is prescribed.
- Clear induction and training for all members of the governing body to ensure they are aware of their roles and responsibilities – regardless of whether they are independent, staff or student members.
- Robust succession planning, to ensure that terms of office for key senior staff and members of the governing body are managed in line with relevant codes of governance.
- Considering whether remuneration of the chair, or members of the governing body, is appropriate to encourage people with the necessary skills to apply. Where necessary, permission can be sought from the Charity Commission to allow this.
- Reviewing academic and related governance arrangements, to ensure that the governing body receives the right kind of information in sufficient detail

to give it confidence in any subcontractual arrangements.

- Reviewing the responsibilities of the chair, senior independent director or similar, relating to the ongoing oversight of the vice-chancellor or principal's performance, and in particular any elements of performance-related pay linked to subcontractual arrangements.

At the end of this brief, we have included some questions for lead providers to consider about managing subcontractual arrangements.

## Risks for students

### Recruitment and support

There are some differences between the student population in 'taught or registered' courses (i.e. all higher education courses including those delivered through subcontractual arrangements) and the student population in courses delivered through subcontractual arrangements only. Table 1 shows the full-time undergraduate student population by certain characteristics, and the same data applying only to students of subcontracted partnerships.

Those studying through subcontractual arrangements are more likely to be mature students, from the most deprived areas of the UK, or living locally before entering higher education. They are somewhat more likely to be from a minority ethnic background or from an area of England where fewer young people go on to higher education, although in these respects the differences are less striking.<sup>13</sup> They are less likely to be international students, being generally resident in the UK.

Although subcontractual arrangements can offer alternative routes into higher education for disadvantaged or underrepresented students, this only aids equality of opportunity where these students receive a high quality education, and are

Table 1: Student characteristics, 2022-23

Student characteristic	Percentage of full-time taught or registered undergraduate students	Percentage of full-time subcontracted-out undergraduate students
Aged 21 to 30 on entry	14.8	32.6
Aged 31 or over on entry	10.1	49.4
Reporting a disability	18.9	7.3
All ethnicities except white or unknown ethnic backgrounds	28.0	31.8
Index of Multiple Deprivation quintile 1 or 2 (most deprived) <sup>9</sup>	33.9	60.6
Tracking underrepresentation by area (TUNDRA) quintile 1 or 2 (least represented) <sup>10</sup>	23.1	28.3
Living locally prior to entry	24.2	48.8
None, unknown or other entry qualifications	9.0	55.3
International students (normally living outside the UK)	16.8	5.5

Source: Analysis by the OfS, including data from the size and shape of provision data dashboard.<sup>11</sup>

Note: For other student characteristic categories, see the data download published alongside this Insight brief.<sup>12</sup>

supported to engage in it fully. Students' opportunities will not be extended if they are recruited onto courses that are poorly delivered, lead to weak student outcomes, or are not well suited to their level of English language proficiency or prior educational experience.

Significantly, information shared with us by the SLC suggests that in 2022-23 and 2023-24 just over 65 per cent of students eligible and applying for SLC funding to study on subcontracted courses were from nationalities where English is not the first language (but they are resident in the UK and are not

international students). This is twice the proportion seen among applicants to courses delivered directly by a lead provider.<sup>14</sup> It is important to note that this data from the SLC refers only to students eligible and applying for SLC funding, whereas Table 1 refers to the characteristics of all students (including international students who are not eligible for SLC funding).

The difference between the proportions in the two student populations in Table 1 of those with no entry qualifications, or whose entry qualifications were unknown or 'other', is particularly noticeable. 9.0 per cent of

full-time undergraduates on all courses (taught or registered) fell into this category, compared with 55.3 per cent in subcontractual arrangements. We would expect a university or college recruiting students with no or unknown qualifications to provide these students with high quality resources and academic support to ensure they are able to succeed in the higher education being offered. The support these students need to succeed is likely to be significant.

The practices of third party recruitment agents recruiting students onto subcontractual courses in England often lack transparency, and in some cases this has given us concerns. For instance, financial incentives may be attracting students onto courses that are not right for them, or students may be asked to pay recruitment agents for services they could undertake themselves, like applying to a university or college, or additional registration fees. In some cases, potential students may be given inaccurate information about courses or student loans in attempts to sign them up.<sup>15</sup>

When recruiting students, it is important that the information and support provided match the needs of those students. Students may need additional help if they are unfamiliar with how the English higher education system works. This might be because they are not originally from England, have limited educational attainment so are less able to engage with the available information, or lack support from family, friends or school to help them understand what it means to go to university or college. Prospective students may also not understand how student finance works, and how taking out a loan from the government to pay for university could affect their future finances.

The 'Regulation of subcontractual provision' section of this brief explains what we have done and continue to do to address these and other concerns. The list of questions that follows the brief provides

## Examples of risks to student recruitment and support

We have seen, or received allegations of, practices including the following:

- Agents have recruited students to unsuitable courses, for example by misrepresenting the qualification that the course delivers, or the requirements needed to complete it successfully.
- Agents have used inappropriate methods to recruit students, for example incorrectly suggesting that the maintenance loan a student might be eligible for is a method by which the government will 'pay the student to study.'
- Students have had to pay excessive charges to recruitment agents as part of the application process.
- Students with very weak English language skills have been told these are sufficient to allow them to study on a course, without the delivery partner putting in place the support to allow them to succeed.
- Students have paid agents or other third parties to falsify English language tests, to allow them to enter courses without attaining the required standard of English.
- Delivery partners have persuaded lead providers to lower entry requirements for the sake of meeting recruitment targets, often resulting in lower entry requirements for students in subcontractual arrangements than for those being taught directly by the lead provider.
- A lack of transparency for students in general about courses taught by delivery partners, where lead providers have not made it explicitly clear that the teaching has been subcontracted out.

practical lessons that lead providers can implement based on the issues we have seen in our engagement with universities and colleges.

### Course quality

Once students have been accepted onto a course at a delivery partner, lead providers need to ensure that the education they receive meets the OfS's expectations for high quality.

One of the ways in which the OfS measures the quality of higher education courses is by considering the proportions of students who continue in their studies, complete their studies, and go on to employment or further study that positively reflects the impact of their higher education. These are individually known as **continuation**,

**completion** and **progression** rates, and collectively as **student outcomes measures**.

The rates for each university or college are also measured against **individual benchmarks**. A benchmark shows the outcomes of similar students on similar courses to those of a particular university or college, when calculated across the sector as a whole. Comparison against individual benchmarks attempts to answer the question: 'If the students at this university or college had gone somewhere else instead, how might they have got on?'<sup>16</sup>

Table 2 shows that rates are lower in subcontractual arrangements than in all universities and colleges. However, there is substantial variation between outcomes for students in subcontractual



Table 2: Continuation, completion and progression rates in higher education at subcontracted providers and all providers

Full-time first degree students	Continuation (2021-22 entrants)	Completion (2018-19 entrants)	Progression (2021-22 graduates)
Subcontractual delivery partners	75.2%	75.7%	62.8%
All providers	87.3%	88.5%	72.0%
Numerical threshold for OfS condition B3	80%	75%	60%

Source: Numerical thresholds for condition B3; Student characteristics data: Outcomes data dashboard; Student outcomes dashboard.<sup>17</sup>

## Student outcomes

In this brief, continuation, completion and progression rates are presented for full-time, first degree students whose courses were subcontracted out.

### Continuation rate

This is the proportion of entrants who were continuing to study a higher education qualification (or who had gained a qualification) one year and 15 days after they started their course.<sup>18</sup> In subcontractual arrangements:

- This rate was below our minimum threshold for 19 out of 60 lead providers.
- 19 lead providers were below their individual benchmark.

### Completion rate

This is the proportion of entrants who gained a higher education qualification (or were continuing in the study of a qualification) four years and 15 days after they started their course.<sup>19</sup> In subcontractual arrangements:

- This rate was below our minimum threshold for nine out of 53 lead providers.
- 17 lead providers were below their individual benchmark.

### Progression rate

This is the proportion of those qualifying at the end of the course who later identified managerial or professional employment, further study, or other positive outcomes among the activities that they were undertaking at the Graduate Outcomes survey census date, 15 months after they left higher education. In subcontractual arrangements:

- This rate was below our minimum threshold for 15 out of 42 lead providers
- 22 lead providers were below their individual benchmark.<sup>20</sup>

arrangements at individual delivery partners, in terms both of their average rates in comparison with sector-wide averages and of their student outcomes measured against individual benchmarks. The blue box [that follows] supplies more details.

Where students have been recruited with lower entry qualifications or English language standards, they are likely to need additional support to ensure they can succeed. Robust approaches to academic integrity should be implemented to ensure that students explicitly understand expectations relating to academic misconduct, and that staff maintain appropriate assessment methodologies. There should be appropriate oversight to ensure that, in cases where students are not able to meet the academic expectations of the course, processes are in place to withdraw them from their studies.

## Risks to taxpayers' interests

There are concerns that public money is not always used appropriately in subcontractual arrangements, resulting in harm to both students and taxpayers. For example, tuition fees may be used to fund poor quality courses that are not good value for money, or tuition fees and maintenance loans may be paid out in relation to individuals who do not genuinely intend to study.

The National Audit Office and Public Accounts Committee reports, which followed investigations into subcontractual arrangements, established a link between subcontracted provision and fraudulent applications for student loans covering maintenance support. In 2022-23, over half (53 per cent) of the £4.1 million fraud detected by the SLC arose in relation to students studying through subcontractual arrangements.<sup>22</sup> In 2023-24, the detected fraud figure involving delivery partners in subcontractual arrangements totalled £3.5 million, which is 46 per cent of the £7.8 million fraud

## Examples of risks to course quality

We have seen, or received allegations of, practices including the following:

- Students have not been clear about what constitutes academic misconduct, or the line between seeking appropriate student support and academic misconduct.
- Students have submitted assessments that are not their own work, in some cases with the complicit support of staff members.
- Staff managing partnerships at lead providers have been incentivised to prioritise recruitment and retention of students above rigorously reviewing course quality and holding the delivery partner to account.
- Lead providers have retained a significant proportion of the tuition fees for courses taught by a delivery partner, without evidence that students have been told this is happening or what these fees are being used for. This raises questions about the funds available to teach and support the students on their subcontracted courses. Some lead providers retain between 12.5 and 30 per cent of tuition fees, with the remainder paid to the delivery partner.<sup>21</sup>

## Examples of risks to taxpayers' interests

We have seen, or received allegations of, practices including the following:

- Data of extremely poor quality has been submitted in relation to students at some subcontractual partnerships, leading to payments being made to, and on behalf of, students who are not genuinely entitled to them.
- Delivery partners have lacked clear attendance policies, making it almost impossible for lead providers to submit accurate data to the OfS and the SLC in relation to these students.
- Students have been encouraged to register for courses that they do not genuinely intend to study, to access public funding through maintenance loans. In some cases, students have withdrawn from courses shortly after receiving these funds; in others there are grounds to doubt that they are continuing to study, despite their termly attendance being confirmed.
- Some staff at delivery partners, and managing the partnership on behalf of lead providers, have been complicit in student academic misconduct, resulting in tuition fee payments being made in relation to students who should have been withdrawn from their courses.
- Delivery partners have reported in their financial statements a very high level of profits, dividend payments or senior staff pay, despite all their income coming from tuition fee payments from lead providers. In these circumstances we have not always seen evidence that lead providers have ensured delivery partners are devoting sufficient funding to support and teach their students.

## Case study: Action to protect public funding

In March 2024, the SLC was contacted by a university to discuss its concerns about the attendance information supplied by its delivery partner. The university suggested that maintenance loan payments, due to be paid to students at this delivery partner in April, should be suspended pending an audit by the university of the delivery partner's records. It also agreed with the SLC that no attendance confirmations would be submitted to the SLC during the audit, meaning that tuition fee loan payments to the lead provider would only be made once the university had assured itself that students were actively engaged on their courses. As a result of this, a number of students were withdrawn and students on later courses are also now being audited. Payments of student funding have therefore been limited to students confirmed as attending their course.<sup>24</sup>

detected in total.<sup>23</sup>

The SLC has taken steps to recover tuition fee funding paid out inappropriately to lead providers, or in some cases to suspend planned tuition fee payments, to allow additional checks to ensure that students studying at delivery partners are genuine before releasing payments.

## Risks for lead providers and the higher education sector

Overall, the risk of reputational and wider damage to a lead provider, and the higher education sector in general, arising from poorly managed

subcontractual arrangements is significant. It can result in the lead provider being found in breach of our conditions of registration and subject to related potentially serious sanctions, and the suspension, recovery, or both, of SLC funding or public funding distributed by the OfS. In some circumstances, the costs of leaving a problematic partnership can far outweigh the financial benefits that it initially promised.

Universities UK has developed, in partnership with GuildHE and the Committee of University Chairs, a franchise governance framework to support universities and colleges to strengthen their management and governance of subcontractual partnerships.<sup>25</sup> This framework sets out principles-based expectations for how universities should identify, mitigate, and manage risks throughout the lifecycle of their partnerships, alongside practical steps that can be taken to implement this approach.

## Regulation of subcontractual provision

We are concerned, therefore, that universities and colleges that rely on subcontractual arrangements to deliver their teaching may be incurring additional risks, including poor outcomes to students and failing to meet their own regulatory conditions. This means we consider a university or college with a business model that involves substantial subcontractual arrangements to represent an increased regulatory risk. We have increased our regulatory focus on this area, and published a blog post in 2022 that highlights some of the associated risks.<sup>26</sup> In 2023, we wrote to lead providers involved in substantial subcontractual arrangements, to remind them of their responsibilities.

When subcontracted courses do not meet our minimum requirements, we are prepared to intervene to protect students and taxpayers. The same applies when a course's student outcomes, or its management and governance, fall similarly

## Examples of risks to lead providers

We have seen, or received allegations of, practices including the following:

- Lead providers have investigated concerns about their delivery partners and uncovered widespread academic misconduct. This has required all students taught by the delivery partner to follow the lead provider's academic misconduct processes, at great cost to the institution and potential detriment to genuine students.
- In some cases, there have been allegations that a delivery partner has been supporting students to cheat by supplying them with assessments, access to essay mills or contract cheating services. This has an obvious potential impact on the quality and reliability of the qualifications awarded, and the lead provider can expect regulatory action by the OfS to address this.
- Inadequate contracts have made it difficult for lead providers to terminate agreements with their delivery partners when concerns have arisen about the quality of teaching. This can result in costly or litigious exit arrangements.
- External auditors have raised significant concerns about the oversight of partnership arrangements, delaying the production of the lead provider's financial statements and risking potential breaches of financial covenants, a loss of lender confidence and other negative impacts.
- Lead providers have prioritised the financial benefits of these arrangements over the quality of courses – for example by reducing the entry requirements for students, and so putting pressure on staff to support students to remain on unsuitable courses, and resulting in poor student outcomes and potential regulatory action.

short. We may investigate potential breaches of our conditions of registration, and we work with the Department for Education and the SLC, to help them ensure SLC funding is protected from misuse and fraud.

We have imposed additional requirements on universities and colleges that subcontract their courses for a large number of students, where we have additional intelligence that suggests students' or taxpayers' interests may be at risk. These requirements include mandatory reporting to us of any changes to partnerships, any adverse allegations about delivery partners and the findings of any investigation into them, and any concerns about the accuracy of data returns. We

expect to engage directly with a lead provider's accountable officer, and in some cases the chair of its governing body, on a regular basis to ensure we can see that these risks are being appropriately addressed.<sup>27</sup>

We have also opened formal investigations into some universities' and colleges' subcontractual arrangements. Our next cycle of quality assessments will largely focus on the academic experiences of students studying through subcontractual arrangements.<sup>28</sup>

We are taking steps to collect and publish more data about partnerships. We use the data that we receive from universities and colleges about their partnership arrangements to inform our understanding of



trends and how these may be changing over time. This also informs our view of potential risks a university or college is exposed to in such a business model.

Following consultation, we confirmed in February 2024 that the student data record will expand to cover students studying under subcontractual arrangements, when these are not included in data returns elsewhere.<sup>29</sup> We are sharing with all lead providers the student outcomes data for each of their subcontractual partnerships, and we encourage them to use this data to strengthen their oversight of these courses. We also plan to publish student outcomes data for each partnership, after a pilot this autumn.

We are also making changes to the financial information we collect from universities and colleges, including a new requirement to provide information about the financial flows for lead providers relating to their subcontractual arrangements.<sup>30</sup>

Registered universities and colleges are required to report to us certain events or matters ('reportable events', defined in our regulatory framework).<sup>31</sup> We also encourage them to talk to us about any concerns they have about subcontractual arrangements, or if they have any questions before entering such partnerships.

## Conclusion

While subcontractual arrangements work for some universities and colleges and their students, successful operation requires management, governance and oversight that are effective, robust and proportionate to the increased risk this business model represents. Such arrangements should never be seen as an easy or cheap option; on the contrary, when things go wrong, they can be difficult and expensive to fix.

At present it is clear that large numbers of disadvantaged students are being taught in this way. In some cases, this is

enabling the teaching of students who might otherwise find access to higher education difficult, or ensuring that students have access to specialised courses. However, it is essential that all such courses are high quality, and that students are given the appropriate support they need to succeed in them.

The OfS's regulatory framework applies to all students of the universities and colleges registered with us, including those whose teaching is subcontractual out to other organisations. The lead provider in such arrangements (along with the delivery partner, if it is also registered with us) is responsible for ensuring that all our conditions of registration are met.

Business models that rely heavily on subcontractual arrangements carry additional risks, which include delivering poor outcomes for students, failing to meet regulatory requirements, and misuse of taxpayers' money. To avoid these risks, the lead provider in a subcontractual arrangement must make certain that students are not being recruited onto courses that are unsuitable for them, and that sufficient support is provided for all students to fully engage with their course. It must make certain that the delivery of a subcontractual course meets or exceeds the OfS's requirements for quality. It must ensure that all its registered students are genuinely engaged in educational studies, and that public funding is used only for legitimate purposes.

In view of the sometimes conflicting business priorities of lead providers and delivery partners, it is essential that governing bodies and senior teams at lead providers have the skills needed to ensure adequate oversight of partnerships. If this is not the case, it should be achieved through training, recruitment, planning and review, and in consultation where necessary with the Charity Commission.

As the regulator for higher education in England, the OfS will continue our increased regulatory focus on subcontractual arrangements. This will include imposing additional requirements on universities and colleges where we consider that such arrangements may be placing the interests of students or taxpayers at risk.



## Oversight of subcontractual arrangements checklist

We have included a checklist to assist lead providers' governance and oversight of subcontractual arrangements. This list is not exhaustive, but offers some important questions for lead providers before entering, and during their management of, a subcontractual partnership.

### Skills and capabilities of senior management

- Does the lead provider have the expertise at a senior level to manage the increased risk associated with this business model, including the challenges of commercial dealings with a delivery partner?
- Are there clear and recorded delegations in place relating to the instigation of new subcontractual partnerships?
- Are there clear and recorded arrangements to identify and manage conflicts of interest relating to partnership arrangements?

The priorities of delivery partners, especially commercial organisations, may well differ from those of the lead provider. The latter should ensure that its senior team and board have access to skills in the areas of commercial practice, risk, internal control and audit.

### Due diligence and contractual arrangements

- Has due diligence been done on the potential subcontractual partnership, including in relation to those operating the partner organisation?
- Does this include a review of how the tuition fees passed to the delivery partner will be used to support the student experience, and how much is to be paid in dividends or payments to senior staff at the delivery partner?
- Does it include a review of the delivery partner's financial sustainability? Would the lead provider be able to take on course delivery for subcontracted students in the event of financial difficulties at the delivery partner?
- Are there clear, comprehensive, written contractual arrangements between the lead provider and delivery partner?
- Do these arrangements set out clear review points, and do they cover how either party can exit the arrangement?

A lead provider's due diligence should include examining a potential partner's business model, its recruitment practices and its motivations for providing these higher education courses.

The lead provider should also explore any potential conflicts of interest that might prevent it from ethically entering into the partnership; for example, whether staff involved in the oversight of partnership arrangements also have a personal or financial interest in the arrangements of a delivery partner.

Written contractual arrangements should include clearly explained delegation of activities between the partners, and a strategy to protect students' interests in case of course change or closure. In this event the lead provider is responsible for fully supporting students, and ensuring that they can continue their education, teaching them directly if necessary. There should be mechanisms to ensure that a new partnership can expand at an appropriate pace, for example a staggered increase in student numbers over time.

### Student recruitment and course delivery

- Are students being recruited in a fair, honest and transparent way?
- How will the lead provider know whether students are being recruited to the admissions standards it sets, including in relation to English language skills and prior qualifications?
- Do course promotion and student recruitment, including activities undertaken by agents, comply with consumer protection law?

- Are there adequate checks to ensure that all students are genuinely engaged in educational studies?
- Does the lead provider understand whether or not recruitment agents will be involved in the recruitment of students?
- If so, it is clear to undergraduate students that they may instead apply directly via UCAS, without having to pay any additional recruitment fees to an agent?<sup>32</sup>
- Are prospective students given clear information about the proportion of their tuition fee that the lead provider will retain?

Information about courses should be clear and accurate, in line with consumer protection law.<sup>33</sup> Prospective students should be given clear information stating that this is a subcontracted course, and identifying the lead provider and delivery partner. They should also be given clear information about the proportion of tuition fees that the lead provider retains. Only those potential students who meet academic, language, and other entry requirements should be targeted in promotion and recruitment activities.

Any allegations of fraud (for example, that tuition fees have been inappropriately paid for students) should be thoroughly investigated and if appropriate reported to the OfS and the SLC.

### **Oversight arrangements**

- Does course delivery meet the OfS's requirements for high quality courses?
- Does course delivery comply with consumer protection law?
- Are students assessed in a rigorous and credible way?
- Does oversight of delivery include audits of subcontractual courses?
- Are there arrangements in place to ensure that the lead provider has sight of any complaints made by students or staff in relation to the delivery of subcontractual courses?

Course delivery within subcontractual arrangements must meet the conditions set out in our regulatory framework and be in accordance with relevant consumer protection legislation.<sup>34</sup> We expect the lead provider to ensure that the courses delivered on its behalf are of high quality. We expect it to ensure that there are arrangements in place to oversee this.

We know many lead providers establish 'link tutor' relationships with their delivery partners (i.e. staff members from the lead provider who are the main point of communication with the delivery partner about course delivery). However, this does not prevent the need for independent external scrutiny of the arrangements, for example through regular independent audit of the course. We would expect the lead provider to ensure that there are arrangements to allow students to complain directly to it about any concerns, so these are visible and can be investigated appropriately.

Lead providers should use data about student outcomes for their subcontractual partners to inform their own view of the adequacy of the partnership and the quality of the courses.

### **Data quality**

- Are there clear protocols in place to ensure accurate data returns to both the OfS and the SLC?

There should be clear, comprehensive, written agreements in place about how the delivery partner collects data on students' attendance and outcomes and communicates it to the lead provider. The delivery partner must tell the lead provider promptly about any changes to students' study, including withdrawal. The lead provider should carry out sample testing and auditing of the data received from the delivery partner as appropriate. In May 2024, the SLC published its expectations in relation to attendance policies for the purposes of student finance.<sup>35</sup>

## Notes

1 For the sake of readability in this brief we may use 'universities and colleges', or just 'universities' or 'institutions', to refer to what our regulatory framework and other more formal documents call 'higher education providers'. We also use the terms 'lead provider' and 'delivery partner' as defined in the text.

2 Overseas arrangements are discussed in '[Transnational education: Protecting the interests of students taught abroad](#)' (OfS Insight brief #18), May 2023.

3 Office for Students (OfS), '[Securing student success: Regulatory framework for higher education in England](#)' (OfS 2022.69), November 2022.

4 Data based on internal OfS analysis, including data from the OfS register. These figures are available, with explanatory notes, in the [data download published alongside this document](#).

5 OfS, '[Student characteristics data: Population data dashboard](#)'.

6 OfS, '[Student characteristics data: Population data dashboard](#)'.

7 OfS, '[Student characteristics data: Population data dashboard](#)'.

8 OfS, '[Navigating financial challenges in higher education](#)' (OfS Insight brief #21), May 2024.

9 The Index of Multiple Deprivation is set of measures which classifies areas in England by their level of deprivation. Index of Multiple Deprivation data is only for UK-domiciled students who have a home postcode in the same country as their university or college.

10 TUNDRA is an area-based measure of young participation in higher education at age 18 or 19 for state-funded mainstream school students in England. It classifies local areas across England using middle super output area and lower super output area according to this young participation rate.

11 OfS, '[Size and shape of provision data dashboard](#)'.

12 See the [data download published alongside this document](#).

13 In this context, 'minority ethnic background' comprises Asian, black, mixed and other ethnicities.

14 Data provided by the Student Loans Company (SLC), June 2024. The SLC holds data on nationality but not on English proficiency. The non-UK countries considered English-speaking were the USA, Canada, Australia, New Zealand and Ireland.

15 National Audit Office (NAO), '[Investigation into student finance for study at franchised higher education providers](#)', January 2024, p28 (2.4); Committee of Public Accounts, 'Student loans issued to those studying at franchised higher education providers', April 2024, p5, p10.

16 For more information on 'Condition B3: Student outcomes' see OfS, '[Securing student success: Regulatory framework for higher education in England](#)' (OfS 2022.69), November 2022, pp107-117.

17 OfS, '[How we regulate student outcomes](#)' (Numerical thresholds for condition B3), July 2023; OfS, '[Student characteristics data: Outcomes data dashboard](#)'; OfS, '[Student outcomes data dashboard](#)'. When we make judgements about whether a higher education provider is providing positive outcomes for its students, we refer to the minimum numerical thresholds for condition B3 that we set in our regulatory framework. Performance below

a numerical threshold does not necessarily mean that a provider is not meeting our minimum expectations. See OfS, '[How we regulate student outcomes](#)' (Numerical thresholds for condition B3), July 2023.

18 A period of two years and 15 days is used for part-time students.

19 A period of six years and 15 days is used for part-time students.

20 OfS, '[Sector distribution of student outcomes and experience measures data dashboard](#)'. These figures are for full-time first degree students. The minimum threshold we expect for full-time first degree continuation is 80 per cent of students continuing after a year and 15 days. The minimum threshold we expect for full-time first degree completion is 75 per cent of students completing their course or continuing to study after four years and 15 days. The minimum threshold we expect for full-time first degree progression is 60 per cent. Completion rates are based on students who entered between 2015-16 and 2018-19, whereas continuation rates are based on students who entered between 2018-19 and 2021-22. Lead providers without many students entering are excluded from the analysis, which is why there are different numbers of lead providers for continuation, completion and progression. The adjusted sector average (benchmark) is different for each higher education provider: it represents the performance, across the sector, of similar types of students on similar types of courses to that of the provider.

21 NAO, '[Investigation into student finance for study at franchised higher education providers](#)', January 2024, p16 (1.7).

22 NAO, '[Investigation into student finance for study at franchised higher education providers](#)', January 2024; p25 (2.3). Sourced by the NAO from the SLC.

23 Data provided by the SLC, May 2024.

24 Information shared by the SLC, May 2024.

25 Universities UK, GuildHE and the Committee of University Chairs, '[Franchise governance framework](#)', July 2024.

26 OfS, 'Preventing fraud on campus', October 2022.

27 The accountable officer is a person, normally the head of the higher education provider, who reports to the OfS on its behalf.

28 OfS, '[Quality assessments](#)', last updated 30 July 2024.

29 OfS, '[Expansion of the student record: Analysis of consultation responses and decision](#)' (OfS 2024.04), February 2024.

30 OfS, '[Improving the financial data we collect](#)', May 2024.

31 OfS, '[Securing student success: Regulatory framework for higher education in England](#)' (OfS 2022.69), November 2022, paragraph 494, pp179-180; OfS, '[Regulatory advice 16: Reportable events](#)' (OfS 2021.44), October 2021.

32 For information on UCAS application fees see, UCAS, '[How do I apply?](#)'.

33 For further information on universities and colleges' duties in the area of consumer protection, see OfS, '[Protecting students as consumers](#)' (OfS Insight brief #19), June 2023.

34 For further information on universities and colleges' duties in the area of consumer protection, see OfS, '[Protecting students as consumers](#)' (OfS Insight brief #19), June 2023.

35 SLC, '[Department for Education: Attendance management guide](#)', May 2024.