

Education and Skills Funding Agency (ESFA) funded Apprenticeship Provision Subcontracting Policy

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1 Introduction and purpose

1.1 De Montfort University offers higher and degree level apprenticeships to employers covering a range of subject areas. The university undertakes to deliver higher and degree apprenticeships with the intention of delivering all parts of the programme itself. However, this may not always be possible. The University undertakes subcontracting agreements as part of its apprenticeship offer where one or more of the following aims are to be met:

- To enhance the opportunities for learners;
- To fill gaps in niche or expert provision, or to provide better access to training facilities;
- To support better geographical access for learners;
- To offer an entry point for disadvantaged groups; or
- To give consideration of the impact on individuals with shared protected characteristics

1.2 The University operates its apprenticeship subcontracting arrangements in-line with the Education and Skills Funding Agency (ESFA) apprenticeship funding rules and associated guidance for subcontracting with delivery partners. The University operates apprenticeship subcontracting where the University acts as the lead training provider and sub-contracts specialist training to a partner institution for delivery. In these circumstances, the University retains the oversight of the whole apprenticeship.

1.3 The purpose of this policy is to provide accurate and comprehensive information to external agencies and potential apprenticeship sub-contractors on how the University procures its subcontracted services, the applicable supply chain fees and charges used and how quality will be managed and monitored. The policy aims to ensure transparency and equitability around subcontracting and the associated retained fees.

2 Scope and context

2.1 This policy governs the apprenticeship subcontracting provision within the University and applies to all ESFA funded provision which the University subcontracts. The Apprenticeships Subcontracting Policy is a mandatory requirement for subcontracting activity. The University operates its apprenticeship subcontracting arrangements in-line with ESFA apprenticeship funding rules and associated guidance for subcontracting.

2.2 The University recognises that it holds full accountability for the delivery of subcontracted activity and that this cannot be assigned to subcontractors.

2.3 It is the responsibility of both the University and their subcontractors to refer to the rules and guidance of the relevant funding agency (Education and Skills Funding Agency or relevant Combined Authority) and any future updates in all matters regarding the delivery of the contract.

3 Responsibilities

This policy is owned by the Registrar (Academic) and Secretary to the Board. The University's Leadership Board is responsible for the approval of this Subcontracting Policy. The management of each subcontract of education or training is provided by a named member of University Leadership Board, relevant to the area of provision, who is responsible for the coordination of contract compliance under the guidance and support of the Degree Apprenticeship Unit, Department of Academic Quality, Directorate of Finance and Procurement Services and Legal Services.

4 Definitions

Subcontracting within this policy refers to providers delivering education or training on behalf of the University. This encompasses subcontractors listed on the Education and Skills Funding Agency (ESFA) 'Declaration of Subcontractors', together with any updates or subsequent listings from the ESFA or the relevant funding authority.

5 Fairness in procurement

- 5.1 The University will at all times undertake fair and transparent procurement activities. Selection and procurement of subcontractors will be carried out in accordance with the University's Procurement Policy.
- 5.2 The University may also tender to be the Lead Provider where the standard requires expert delivery from the employer and will follow the appropriate tender process.
- 5.3 The University will inform the Chief Executive of the ESFA in writing, about any circumstances which might lead to an actual or perceived conflict of interest.

6 Due diligence

- 6.1 The University will undertake a robust process of due diligence when selecting potential subcontractors to ensure the highest quality of learning delivery is made available, which demonstrates value for money and has a positive impact on the experience of both Employers and Learners.
- 6.2 In line with ESFA Guidance, the University will only procure the service of subcontractors who are registered on the Register of Apprenticeship Training Providers (RoATP) to deliver services to employers.
- 6.3 At least annually, De Montfort University will conduct a due diligence review of its subcontractors, including performance management, to ensure that the subcontracted provider continues to be able to deliver contracted services. The University will also conduct further due diligence checks if there is any material change in the subcontracted provider that has the potential to impact on its ability to deliver subcontracted services. These include but are not limited to:
 - Merger with another provider
 - Change of ownership
 - Change of key personnel (e.g. managers, directors, link person)
 - Any issues that may raise concern about the subcontractor's ability to deliver the

programme (e.g. infrequent updates, poor student progress, student or employer complaints). These will also trigger an immediate review meeting.

7 Contracting arrangements

- 7.1 The University has a standard legal agreement template for apprenticeship subcontracting and this is used/adapted for all subcontracting agreements. Agreements are signed after approval has taken place, and before the subcontracting arrangement commences. The requirements of this policy form part of that contractual agreement. It will be signed by the subcontractor and the University. Terms and conditions will be agreed and included in the contract. The University, Ofsted and the ESFA are granted full permission and rights to monitor the quality of training being provided and visit the subcontractor at their premises, training sites or employer's premises from which they operate.
- 7.2 The University retains responsibility for all of the actions of our delivery subcontractors that are connected to, or arise out of, all the apprenticeship training and on-programme assessment that is subcontracted to them.
- 7.3 In accordance with ESFA funding rules, as the lead training provider the University will undertake a substantive portion of the delivery of any apprenticeship where a subcontracting arrangement is in place.
- 7.4 The University shall only use delivery subcontractors who satisfy one of the following two criteria:
- a. they are on the published RoATP and have applied by the main or supporting application routes.
 - b. they are either the apprentice's employer, a connected company or charity as defined by HMRC and are on the published RoATP, having applied through the employer-provider application route.
- 7.5 Serial subcontracting is not allowable under the apprenticeship funding rules. Therefore, as the lead training provider, the University will take steps to ensure that any subcontracting arrangement it enters into with a delivery subcontractor, does not require this type of arrangement.
- 7.6 The University is required to obtain an external auditor's report where the total of all subcontractors delivering ESFA funded provision on their behalf exceeds or is anticipated to exceed £100,000 in any single funding year, as set out in the ESFA Apprenticeships Funding Rules documents.
- 7.7 The University is required to declare its use of delivery subcontractors to the ESFA.

8 Quality assurance and performance management meetings

- 8.1 The University is committed to delivering high quality teaching and learning for the apprentice and employer across its provision and will work with subcontractors to review progress and manage the quality of external provision.

- 8.2 All new subcontractors will be subject to an initial visit to confirm approval of appointment as a subcontractor.
- 8.3 In order to allow for appropriate oversight and support of quality of delivery, the following measures are currently in place to monitor subcontractors:
- Quarterly performance quality reviews which include a review of the subcontractor's Quality Improvement Plans (QIPs)
 - Quarterly contract review meetings between the University and its subcontractors
 - Regular planned and unplanned observation visits to check on the quality of Information, Advice and Guidance (IAG) teaching, learning, assessment and progress. The frequency will be agreed within each specific contract.
 - Announced and Unannounced compliance review visits
 - Review of effectiveness of subcontracting in our Self-Assessment Report (SAR)
 - Other ad hoc meetings, visits and discussions take place for general issues as they arise but these also form part of our relationship management and support for subcontractors and give rise to actions and interventions where appropriate
 - Consideration of the effectiveness and quality of sub-contracting in relevant programme Quality Enhancement Review
 - Quarterly reporting to Faculty and University Leadership Board, and Education Inspection Framework Quality Improvement Committee on the performance of each sub-contract
 - Annual reporting to University Leadership Board and Audit Committee on the effectiveness of subcontracting and compliance with the university's sub-contracting policy
- 8.4 These mechanisms are designed to ensure the quality of delivery, that apprentices exist and that they are eligible for funding under the ESFA apprenticeship funding rules.
- 8.5 There are two types of meetings which form part of the quality assurance: Quality Assurance and Performance Management meetings.
- Quality Assurance meetings support subcontractors to implement and maintain high quality teaching, learning and assessment. Its focus is to ensure students have a positive learning experience, allowing individuals to make individualised progress to achieve their career goals. Quality assurance procedures are taken from the Further Education and Skills Inspection Framework and Handbook respectively Education Inspection Framework (EIF) - GOV.UK (www.gov.uk) Further Education and Skills Inspection Handbook - GOV.UK (www.gov.uk).
 - Performance Management meetings ensure data and statutory compliance is upheld and to provide accuracy and transparency of ILR data, whilst monitoring quality assurance

relating to the delivery programme(s).

- These elements may be covered in the same meeting where practicable to do so.

- 8.6 The scheduled Quality Assurance meetings will be held over each academic year in negotiation with the subcontractor. In addition, there can be up to three unannounced/short notice meetings equally, over the academic year. To facilitate the efficiency and accuracy of these meetings, subcontractors will be asked to provide the required information at least two weeks prior to any scheduled meetings. Specific details will be communicated accordingly.
- 8.7 The Performance Management meetings are scheduled towards the beginning of each term. DMU will take a risk management approach to subcontractor management to ensure that appropriate levels of contract monitoring are maintained, therefore additional visits as required may be discussed where appropriate. In order to enable Performance Management meetings to be conducted effectively and efficiently, the subcontractor will be asked to provide the required information at least two weeks prior to any scheduled meetings. Specific details will be communicated accordingly.
- 8.8 Where a subcontractor permanently changes delivery staff on a programme, they should inform the University of this change immediately, and undertake a Disclosure and Barring Service (DBS) check as appropriate. Copies of the new trainer's CV and certificates should be sent to the appropriate University Faculty Apprenticeship Lead for approval.
- 8.9 A formal agenda will be distributed in advance of the meeting which will detail the meeting type. The focus of the visit will be based on University's data and an assessment of the information provided by the subcontractor prior to the visit taking place. The outcome of meetings will be provided to the subcontractor for their records.
- 8.10 Where Contract Reviews or QA meetings highlight areas of concern, an action plan will be drawn up by the subcontractor, and agreed by the University, to address the areas of concern. Additional meetings and QA visits will be scheduled as required by the University until the issues have been resolved. Where issues are not resolved within the initial agreed timescale, they will be escalated to University Leadership Board.
- 8.11 All subcontractors must agree to this schedule of meetings and QA visits prior to being awarded contracts.
- 8.12 The University will also take into account feedback, both solicited and unsolicited, from apprentices and their employer as part of its quality assurance process.

9 Internal policies

- 9.1 Subcontractors are required to have robust internal policies to ensure compliance with legislative undertakings and general good practice and make certain that policies are regularly updated and effectively implemented, the requirements of which are identified in the contract. As a minimum any subcontractor will be expected to have a policy or policies covering the following topics approved at an appropriate level in the organisation, copies of which will be held by De Montfort University for Audit and Inspection purposes and made available to ESFA and Ofsted as part of their inspection and Audit regime:

- Employment law & appeals
- Data Protection (UK GDPR compliant)
- Health & Safety
- Equal Opportunity/Equality & Diversity
- Assessment & Internal Validation
- Safeguarding & Prevent
- Insurance:
 - Employers Liability Insurance (compulsory) = £10,000,000 any one occurrence/number of occurrences
 - Public Liability Insurance Cover = £5,000,000 any one occurrence/number of occurrences.

9.2 The University will consider the subcontractor's quality management procedures and experience to determine whether the subcontractor will use their own or be required to use the University's procedures.

10 Supply Chain Fees and charges

10.1 The 'Supply Chain Fees and Charges' applies to subcontractors of the University as listed on the 'Declaration of Subcontractors' and notified to the ESFA. The University may retain a maximum of 20% of funding delivered through subcontractors for a standard subcontracting agreement. This retention is calculated to cover day-to-day management of subcontracted delivery, monitoring of learner progress, collecting and updating due diligence, ensuring audit compliance, dealing with partner queries, coordinating self-assessment processes, quality and compliance monitoring, as well as other similar services as needed. The university calculates the costs of these activities based on the staff time and other resources required to deliver them. This will be agreed with each subcontractor in advance of the contract start and is specified in the contract for the sub-contracting.

10.2 The retention also includes administration support to process the data, Individual Learner Record (ILR) management and management of funding and finances (preparation and processing of payments).

10.3 The retained percentage may be increased where a University Risk Assessment deems a Subcontractor to be a Medium or High risk, or if a higher level of administrative and management support is necessary for a particular subcontractor. The retained percentage may be decreased where a University Risk Assessment deems a Subcontractor low risk, and the level of administrative and management support required is significantly lower than for other subcontractors.

10.4 The University will endeavour to ensure the retained fee arrangements for different subcontractors are fair and equitable based on these parameters. If additional and/or exceptional services are required of the University in ensuring quality subcontractor provision, there will be a separate fee agreed above the core retention percentage based on usage (such as Internal Validation, additional training etc.).

11 Payment

11.1 Payment terms and timings are set out within individual Apprenticeship Subcontract

11.2 Payment to subcontractors will be made by BACS subject to all valid paperwork and records having been accurately submitted within the required time scale and under the terms of the Contract issued. A checklist of key dates and deadlines for the paperwork to be received for inclusion in the return to the Education Skills Funding Agency will be provided. Payment details are also included in the contract schedules issued to subcontractors at the start of the new contract year.

11.3 The payment is calculated on data submitted to the ESFA (or relevant funding authority) by the University in the preceding month and paid in line with Contract terms; within 30 days of the ILR data return and of a valid invoice having been received.

12 Policy review and communication

The University will review this policy and the subcontracting rationale annually. The subcontracting rationale should be amended by the 31st July each year and needs to be approved on behalf of the governors. Any changes to the policy will be communicated to existing subcontractors at the contract management meetings. The policy will be discussed with new subcontractors prior to their engagement. An up-to-date copy of this policy will be posted on the University's website and paper copies will be made available upon request.

13 Declaration of use of sub-contractors

In line with ESFA funding rules, the University will submit a subcontractor use declaration to ESFA at least twice each year summarising the value of any sub-contracted provision paid for in the previous period. The University will also publish a summary of payments made to sub-contractors in the previous year on its website each year.

14 Duties within the university

14.1 Nominated members of staff with strategic lead responsibility for subcontracting:

- Registrar (Academic) and Secretary to the Board of Governors

14.2 Nominated members of staff with responsibility for procurement of subcontractors:

- Head of Procurement Supported by Head of Apprenticeships and,
- the nominated University Leadership Board subcontract lead for the specific subcontract.

14.3 Nominated member of staff with responsibility for performance management of subcontractors:

- Managed by DAQ – QA monitoring visits
- Supported by the nominated ULB subcontract lead

14.4 Nominated member of staff with responsibility for Quality Assurance of subcontractors:

- Managed by DAQ – QA monitoring visits

14.5 Policy Approval:

- University Leadership Board

15 Contingency planning

15.1 The university will develop a specific exit plan for each subcontractor and provide this to the relevant subcontractor.

15.2 If for any reason, financial or otherwise, a subcontractor is unable to continue delivery either temporarily or permanently; the University will work with the subcontractor to implement the exit plan to ensure the continuity of delivery for learners enrolled on Apprenticeship provision appropriate to the circumstances. The subcontracted provider is required to notify De Montfort University immediately if there are any changes that may cause a risk to the contracted delivery. These include but are not limited to:

- The possibility of the provider ceasing to trade
- Poor Ofsted Inspection
- Poor ESFA audit
- Other significant changes that affect the ability of the subcontractor to deliver required programmes

15.3 Where a subcontractor is unable to continue delivery on a temporary basis, the University will conduct an immediate contract review and reserves the right to seek alternative provision of services to ensure continuity for learners. Options may include, but are not limited to:

- Delivery at University, or other appropriate, premises
- Delivery using University staff
- Transfer of delivery to an alternative subcontractor

16 Policy sign-off and oversight

16.1 This policy is owned and approved by De Montfort University's Leadership Board.

16.2 Oversight of application of the policy will be achieved by:

- An annual schedule of planned QA and contract review visits will be produced each year and reported to the University's Education Inspection Framework Quality Improvement Committee. The Head of Quality will provide an update report to each Education Inspection Framework Oversight Group on the following:
 - Planned QA visits conducted against the schedule
 - Unplanned QA visits conducted against the schedule arising from any issues
 - Any risks or issues identified and mitigating action taking place
 - Updates on any previously reported issues
 - Any changes to the planned reviews for the rest of the year.
- An annual report on the effectiveness of subcontracting arrangements and compliance with the sub-contracting policy will be presented to University Leadership Board and Audit Committee
- Planned contract reviews conducted against the schedule
- Unplanned contract reviews conducted against the schedule arising from any issues

- Any risks or issues identified and mitigating action taking place
- Updates on any previously reported issues
- Any changes to the planned reviews for the rest of the year.

16.3 Each year the Education Inspection Framework Quality Improvement Committee (EIFQIC) will approve and submit a report to the Academic Quality Committee (AQC) on compliance with the policy and any issues arising from the QA or Contract reviews. This report will also recommend any required revisions to the policy.