

Subcontracting Policy for Department for Education- funded provision

**DMU subcontracted provision for 16-19 funded
provision and Apprenticeships**

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1. Introduction

- 1.1 De Montfort University offers a range of provision under the Department for Education (DFE) grant funding agreement. The university undertakes to deliver this provision 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 this provision where one or more of the following aims are to be met:
- enhance the opportunities for learners;
 - fill gaps in niche or expert provision, or to provide better access to training facilities;
 - support better geographical access for learners;
 - offer an entry point for disadvantaged groups; or
 - give consideration of the impact on individuals with shared protected characteristics
- 1.2 The University operates its subcontracting arrangements in line with the DfE apprenticeship and 16-19 funding rules and associated guidance for subcontracting with delivery partners.
- 1.3 Where the university operates subcontracting, the university acts as the lead training provider and subcontracts specialist training to a partner institution for delivery. In these circumstances, the university retains the oversight of the whole apprenticeship.
- 1.4 The purpose of this policy is to provide accurate and comprehensive information to external agencies and potential subcontractors 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

- 2.1 This policy governs the subcontracted provision within the university, whether managed through the Leicester campus or the London campus, and applies to all DfE funded provision where the University subcontracts an aspect of delivery. The Subcontracting Policy is a mandatory requirement for subcontracting activity.
- 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 (DfE or a relevant Combined Authority) and any future updates in all matters regarding the delivery of the contract.

3. Responsibilities

- 3.1 This policy is owned by the Registrar (Academic) and Secretary to the Board. The management of each subcontract of education or training is provided by a named member of University Leadership Board (acting as the subcontracting lead for a particular subcontract), relevant to the area of provision, who is responsible for the coordination of contract compliance under the guidance and support of the Apprenticeships and Technical Education Services (ATES), Academic Quality Services, Department of Academic Quality, Directorate of Finance and Procurement Services and Legal Services teams.

University Leadership Board

- 3.2 The University's Leadership Board is responsible for the approval of this Subcontracting Policy, and for provision of institutional oversight of subcontracted activity through the consideration of quarterly reports provided by ULB subcontracting leads.

Senior managers

- 3.3 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 Apprenticeships and Technical Education Services (ATES), Academic Quality Services, Department of Academic Quality, Directorate of Finance and Procurement Services and Legal Services.

Subcontracting Lead

- 3.4 The subcontracting lead is named member of ULB who is assigned to each subcontract. The subcontracting lead is responsible for the conduct of quarterly performance quality review meetings and for reporting to Academic Quality Committee and ULB on the performance of subcontracting.

Apprenticeships and Technical Education Services (ATES)

- 3.5 ATES are responsible for supporting the operational management of subcontracting, ensuring that the university maintains accurate data returned to the ILR and that funding claims are accurate, and for the provision of management information to support contract management and quality oversight of the delivery of subcontracting.

Legal Services

- 3.6 Legal Services are responsible for annual review of the university's subcontracting template in conjunction with Apprenticeships and Technical Education Services.

4. General principles/Policy statements

- 4.1 DMU will act in accordance with the DfE Subcontractor Standard as amended from time to time, in ensuring that:
- 4.2 There is a clear and consistent approach for the (contract) management of subcontractors by lead providers and that there are robust assurance review arrangements. This policy will assist in mitigating the risk of:
- inadequate contract/management of subcontractors
 - non-compliance with DfE funding rules by subcontractors; and
 - fraudulent and incorrect funding claims

Fairness in procurement

- 4.3 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.
- 4.4 The University may also tender to be the Lead Provider where the standard requires expert delivery from the employer or a regulated and accredited partner and will follow the appropriate tender process.
- 4.5 The University will inform the Chief Executive of the DfE in writing, about any circumstances which might lead to an actual or perceived conflict of interest.

Due diligence

- 4.6 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 Learners and for Employers where appropriate.
- 4.7 In line with DfE Guidance, the University will only procure the service of subcontractors for the delivery of apprenticeships where they have a current UKPRN, cannot deliver full apprenticeship standards, have engaged the 'Funding higher risk organisations and subcontractors' policy', and, for the delivery of apprenticeships provision only, where they satisfy one of the following criteria:

- They are on the published Apprenticeship Provider and Assessment Register (APAR) and have applied by the main provider or supporting provider application routes; or
- They are the apprentice's employer, or a connected company or charity as defined by HMRC, and are on the published APAR, having applied through the employer-provider application route; or
- They have applied to the APAR subcontracting exception process and have been approved to be exempt from the requirement to be on this register and can produce written approval from the department confirming that this exception applies to them, including its duration; or
- They are not on the published APAR but will deliver less than £100,000 of apprenticeship training and on-programme assessment, under contract across all main providers and employer-providers, between 1 August and 31 July each year.

4.8 At least annually, the 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

5. Contracting arrangements

5.1 The University has a standard legal agreement template for subcontracting, which is updated in line with the subcontracting standard, 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. The agreement 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 DfE 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.

- 5.2 The university retains responsibility for all of the actions of delivery subcontractors that are connected to, or arise out of, all the training and on-programme assessment that is subcontracted to them.
- 5.3 In accordance with DfE 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.
- 5.4 Serial subcontracting is not allowable under DfE funding rules for Apprenticeships or 16-19 provision. 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.
- 5.5 The university is required to declare its use of delivery subcontractors to the DfE twice a year, once in June and again in October. The university will also publish a summary of payments made to sub-contractors in the previous year on its website each year.
- 5.6 The university will develop a specific exit plan for each subcontractor and provide this to the relevant subcontractor.
- 5.7 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 the provision appropriate to the circumstances. The subcontracted provider is required to notify the 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
 - Ofsted judgement of 'needs attention' or 'urgent improvement'
 - DfE judgement of 'improvement required' or 'unsatisfactory'
 - Any other significant changes that affect the ability of the subcontractor to deliver required programmes
- 5.8 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

6. Monitoring and review

- 6.1 The university is committed to delivering high quality teaching and learning across its provision and will work with subcontractors to review progress and manage the quality of external provision.
- 6.2 All new subcontractors will be subject to an initial visit to confirm approval of appointment as a subcontractor.
- 6.3 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 the 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 which may 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 Academic Quality Committee (AQC) 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
- 6.4 These mechanisms are designed to ensure the quality of delivery, that apprentices exist and that they are eligible for funding under the DfE funding rules.
- 6.5 There are two types of meetings which form part of the quality assurance: Quality Assurance meetings and Performance Management meetings.
- 6.6 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 Toolkit respectively Education Inspection Framework (EIF) - GOV.UK (www.gov.uk) Further Education and Skills Inspection Toolkit - GOV.UK (www.gov.uk).
- 6.7 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).
- 6.8 These elements may be covered in the same meeting where practicable to do so.
- 6.9 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.
- 6.10 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. 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.
- 6.11 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.
- 6.12 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.
- 6.13 All subcontractors must agree to this schedule of meetings and QA visits prior to being awarded contracts.
- 6.14 The university will also consider feedback, both solicited and unsolicited, from learners and employers (where appropriate) as part of its quality assurance process.

7. Internal policies

7.1 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 DfE 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

7.2 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.

8. Supply chain fees and charges

8.1 The 'Supply Chain Fees and Charges' applies to subcontractors of the university as listed on the 'Declaration of Subcontractors' and notified to the DfE. 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.

- 8.2 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).
- 8.3 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.
- 8.4 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.).

9. Payment

- 9.1 Payment terms and timings are set out within individual Subcontract Agreements.
- 9.2 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 DfE will be provided. Payment details are also included in the contract schedules issued to subcontractors at the start of the new contract year.

10. Policy sign off and oversight

- 10.1 This policy is approved by University Leadership Board.
- 10.2 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 AQC.
 - The Head of Academic Quality will provide an update report to each AQC 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.

10.3 Each year a report will be submitted 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.

11. Document and version control information:

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