



# Apprenticeship Sub-Contracting Policy

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# Apprenticeship Sub-Contracting Policy

## 1 Introduction

Apprenticeship teaching delivery and coaching is normally provided by staff employed by Northumbria University. Where there is benefit to the programme i.e. by enhancing employer collaboration, workplace expertise or expanding the geographical location of delivery, the University may sub-contract teaching and coaching to suitable organisations. A sub-contractor may be the employer or another training provider.

This policy and the signed agreement between sub-contractor and the University are intended to comply with the [ESFA subcontracting standard](#). In operating subcontracting agreements in line with this policy, the University can demonstrate its knowledge, skills and experience of contracting with, and managing, delivery subcontractors, as required by the ESFA.

## 2 General Principles

- i) This policy is owned by Quality & Teaching Excellence (QTE), Student, Library and Academic Services, and will be reviewed and updated annually to ensure its ongoing relevance and accuracy in relation to published ESFA rules.
- ii) A statement of the University's approach to sub-contracting (including reasons for sub-contracting, services to be provided by the University and the process for determining associated costs) will be maintained on its website.
- iii) Sub-contracting arrangements will be scrutinised by Apprenticeship Sub-Committee (ASC), approved by Finance and Resources Committee and noted at Education Committee.
- iv) Sub-contracting arrangements will be subject to appropriate University financial approval.
- v) Services will be sub-contracted only on the request of, or with the agreement of, the Employer/s. A written contract detailing the respective rights and obligations of the University, as Training Provider, and Sub-contractor will be signed by both parties. That agreement will incorporate the EFSA Rules for Training Providers and the sub-contractor will agree to abide by the EFSA Rules.
- vi) A named University colleague with appropriate seniority and experience will be appointed to act as Contract Manager, responsible for the overall effective operation of the sub-contract.
- vii) Prior to contracting, first due diligence checks will be carried out on potential sub-contractors including facilities for apprentices, reputation of the organisation and any recent audit results. This will be included in the strategic planning approval process.
- viii) QTE will ensure that a subsequent annual review of due diligence (financial and otherwise) takes place to ensure the ongoing suitability of the sub-contracting party.
- ix) Responsibility for the continuity of provision and the quality of provision resides with the University.
- x) The sub-contractor must provide sub-contracted services and not sub-contract to a second level.
- xi) Teaching material is developed and owned by Northumbria University except where specified in a separate agreement between the University and an employer/provider acting as sub-contractor.

- xii) The University must maintain the relationship with the employer (as lead partner) – this must not be a role provided by the sub-contractor.

### **3 Decision to Sub-Contract**

The decision to sub-contract will typically be made for the following key reasons:

- i) The apprenticeship contains an element of restricted or specialist provision which can only be delivered by a particular organisation (for example, elements of the Police Constable Degree Apprenticeship curriculum).
- ii) The University does not offer part of the core activity aligned to the curriculum for a particular contract (for example, provision of Functional Skills level 2, Maths and English).
- iii) Issues such as geographical reach, where the use of a sub-contractor enables provision to multiple sites in a more effective manner.
- iv) Other reasonable purposes as identified particular to the circumstances of an employer request.
- v) All decisions to sub-contract will be made in line with current ESFA guidance and regulations.
- vi) The approval process is as follows:
  - Prior to tender the portfolio development team will initially receive all new requests to enter into a sub-contracting relationship for an Apprenticeship opportunity, regardless of value.
  - The Apprenticeship Sub-Committee will also consider the proposal.
  - Details of any proposed subcontracting arrangement including educational rationale, due diligence report and costings for wider University scrutiny is submitted to Planning Committee as an addendum to the programme approval documentation. Planning Committee is therefore able to halt development of the programme if the appropriate scrutiny of potential sub-contracting has not taken place according to University policy.
  - Planning Committee recommendations regarding proposals to sub-contract will be submitted to Finance and Resources Committee for approval.

### **4 Sub-Contractor Selection**

#### **4.1 Procurement of sub-contractors**

The University will only procure the service of sub-contractors who are:

- i) registered on the Apprenticeship Provider and Assessment Register (APAR) to deliver services to employers and have applied by the main provider or supporting provider application routes
- ii) they are either the apprentice's employer, a connected company or charity as defined by HMRC and are on the published Apprenticeship Provider and Assessment Register (APAR) , having applied through the employer-provider application route. Note: such sub-contractors are only eligible to deliver apprenticeship training and/or on- programme assessment to apprentices employed either by them or a connected company or charity as defined by HMRC,
- iii) They have applied to the APAR subcontracting exemption 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

- iv) 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. Note – only main providers and employer-providers who have written confirmation from ESFA that they have fully achieved the subcontracting standard, at the point of subcontracting, can use a subcontractor who is not on APAR (as described in the Apprenticeship Funding Rules). Subcontractors working under this flexibility must meet the requirements outlined in the Apprenticeship Funding Rules.

and

- v) have been fully approved via the process outlined above.

The procurement process will be instigated and managed by Academic Registry prior to contracting.

Procurement of sub-contracted services is carried out in accordance with the University's Financial Regulations and the process established for ESFA regulated activity, ensuring there is a robust assessment process for selecting sub-contractors.

In sub-contracting part of the service delivery, consideration as to whether the University would need to apply Public Contracts Regulations 2015 will be undertaken, in consultation with Procurement. Procurement must also be consulted if the total value of the sub-contract exceeds £50,000 (or other limit as set out in the Financial Regulations from time to time).

## **4.2 Contract Manager**

Each sub-contract will have a nominated Contract Manager, usually the Head of Department, who will oversee the sub-contract.

The contract manager(s) will have a detailed knowledge of the contract and other relevant issues, such as service level agreements, requirements in line with ESFA contract and funding rules and current sub-contractor performance.

The contract manager(s) will have the appropriate skills (both specific contract management skills and more general commercial awareness and expertise), with access to relevant training and development. Experienced contract managers are utilised on key contracts.

The contract manager(s) will have appropriate delegated authority to manage the contract effectively.

## **4.3 Pre contract due diligence**

Where a new programme proposal includes sub-contracted provision, the academic proposer will submit an initial due diligence report to planning committee. The report is completed in liaison with portfolio development team and the sub-contracting organisation and will contain the relevant information in order for the University to discharge its due diligence responsibilities around key areas including (but not limited to):

- i) rationale and strategic fit

- ii) robust safeguarding and prevent policies and procedures
- iii) financial strength
- iv) standards of quality in the provision of services being subcontracted and
- v) its obligation to ensure that it is not funding extremist organisations through the sub-contracting of apprenticeship training and/or on-programme assessment.

Information is likely to include the following (non-exhaustive list of) sources:

- Internal policies governing employment, GDPR and data protection, health and safety, equal opportunities, safeguarding and procedures to assure quality of provision
- Facilities available to apprentices
- Teaching/coaching staff qualifications and experience
- Recent/latest ESFA audit results
- Latest Ofsted reports and associated findings and recommendations
- Any other information as deemed necessary and proportionate.

The University may visit the premises of a potential sub-contractor if deemed necessary to assess their suitability to deliver services at the standard required over the length of the contract.

Where the University decides that the sub-contractor does not meet our required standards then regardless of the employer's position, the University will not employ that sub-contractor, even where this may risk the relationship with the employer.

The University will ensure compliance with the Financial limitations that are outlined in the Apprenticeship Funding Rules.

The results of any due diligence will be made available to the ESFA upon request and hence must be documented in a sustainable manner. A standard due diligence report form will be used for this purpose.

## **5 Contracting and Appointment**

### **5.1 Roles, Responsibilities and Charges for Services Provided**

Prior to each sub-contracting relationship, the University will clearly describe to each employer and potential sub-contractor the reason for sub-contracting and all services to be provided and the associated costs when doing so.

This must include a list of specific costs for managing the sub-contractor; specific costs for quality monitoring activities and specific costs for any other support activities offered by the University to the sub-contractor.

All of these costs must be individually itemised and describe how each cost contributes to delivering high quality training. The University must also explain how such costs are reasonable and proportionate to delivery of the sub-contracted apprenticeship training.

The University retains overall responsibility for performance and quality assurance processes of the sub-contractor, and a proportion of the fee may be retained for this purpose. Specific responsibilities for each sub-contract will be formalised in the contract between the parties.

### **5.2 Price and payment**

The price agreed for sub-contracted services should be clearly set out, along with any provisions for how it may be adjusted over time, to cover change in scope of services, inflation or other similar issues. The University's payment terms should be applied to the sub-contract, as set out in the Financial Regulations.

The contract must set out specific pricing for those elements to be delivered directly by the University, those to be delivered by the sub-contractor, and the specific price for management and monitoring of the sub-contractor over the contract.

Amounts paid to an employer as delivery sub-contractor must reflect only the cost of delivery and must not contain any element of profit.

### **5.3 Performance Standards**

The parties will establish clear key service levels and performance indicators, along with minimum levels of acceptable performance as part of the contract. Performance should consider all aspects of the service being sub-contracted, including but not limited to quality standards, operational performance and financial issues.

The contract will also set out what action will be taken in the event of performance below agreed levels, number of days permitted for issues to be resolved, and the University's rights in the event that performance falls below acceptable standards on repeated occasions, including the right to terminate.

Service management is well structured and understood by both parties including a comprehensive and objective performance management framework is in place when the contract is signed. The contract will include clear contact points for service users both within the sub-contractor organisation and with the contract manager.

Where appropriate, user compliance with the contract is monitored and managed to ensure maximum operational effectiveness and value for money.

### **5.4 Term and termination**

Sub-contracting contracts should align terms with the 'parent' contract to which the sub-contracted services are being provided. Particularly, contract length, any break clauses, notice periods and termination rights should be aligned wherever possible. This will ensure that if the parent contract is terminated, the sub-contracting contract can similarly be terminated on a similar basis to avoid unnecessary costs being incurred by the University and not recovered.

The University would normally expect to receive at least 12 months' notice of withdrawal of sub-contracted services, or at minimum, sufficient notice to ensure that all enrolled students can complete their studies.

### **5.5 Data Protection**

Sub-contractors will need to agree data processing clauses within the contract (or a supplementary data processing agreement) in compliance with data protection legislation. The sub-contractors must have adequate processes and systems in place to protect the personal information of apprentices, to be assessed as part of pre-contract due diligence.

Personal information which is necessary for the delivery and administration of the

programme will be shared between sub-contractor and University. Detail will be specified in the contract signed by both parties.

## **5.6 Costings and Contract Approval**

The recommendation to award a sub-contract will follow existing University governance decision processes. To facilitate the decision, a full costing will be prepared in line with requirements set out by Finance, along with a summary of due diligence outputs, academic overview and operational delivery plans.



## 6 In-Contract Governance and Oversight

### 6.1 Performance Management and Monitoring

The contract between the parties shall establish the key principles of governance and performance management to ensure the quality of provision to students. This will include but is not limited to:

- Named parties responsible for the management of the contract from both parties
- Nature and frequency of meetings to review performance of the service(s) and its continued development
- Detail of required service levels to be achieved by the sub-contractor, along with the relevant key performance indicators to demonstrate achievement of such
- Associated content, format and frequency of management information required to assess overall sub-contractor performance
- Actions to be taken in the event of continued poor performance, and escalation in the event of dispute
- Timeline of key dates to be adhered to (including but not limited to mandatory regulatory returns, such as annual audits for the ESFA).

All sub-contracting proposals are approved by Finance and Resources Committee in order to demonstrate Board of Governors oversight and approval of the rationale. As such, a summary performance scorecard will be produced with the support of the Commercial Director, which will be reported to the Committee on an annual basis.

### 6.2 Contract Management

The performance of sub-contracted delivery is managed through nominated contract managers within departments and the Pro Vice-Chancellor Education undertakes the role of Senior Responsible Owner (SRO).

Contract Managers will regularly review the sub-contractor risk register, ensuring risk governance is followed. They will ensure Joint Steering Committees (JSC) are managed in line with the Terms of Reference.

### 6.3 Ongoing Due Diligence and Quality Assurance & Risk

The performance of sub-contracted delivery will be reviewed as part of the Continuous Programme Performance Review (CPPR) process. CPPR reports of programmes including sub-contracted provision will be reported to Apprenticeship Sub-Committee for oversight.

Risk registers are in place and will be reviewed and updated by the relevant Contract Managers to ensure key risks and mitigating controls are identified, any control improvements are identified and implemented on time, and risks that no longer pose a threat are removed. Please refer to the [Risk Appetite Statement](#)

In addition, an annual due diligence and quality assurance review will be conducted in accordance with ESFA guidelines. This process is managed by QTE and will ensure the ongoing suitability of the sub-contracting party. QTE will schedule and manage the process and ensure the required quality checks are completed, actions identified appropriately and the standard report is submitted to deadline. Annual quality

assurance and due diligence review will include:

- An update of key due diligence checks
- Teaching observation visits
- Monitoring of teaching material (if relevant).

The University shall carry out additional ad-hoc due diligence checks if there is a material change in the sub-contracting organisation which may affect its ability to deliver services, ideally on an annual or other reasonable basis depending on the nature of the partner.

#### **6.4 Reporting and Management of Material Changes**

The sub-contractor will be liable to inform the University of any such changes as part of the contractual arrangements between the parties formalised at the outset of the agreement, to include (but not limited to):

- Breach of ESFA or similar (including APAR) rules
- Receipt of a qualified audit opinion (financial statements or ESFA)
- Breach of bank covenants or refusal of credit/ bank loans
- Risk to the sub-contractors ability to continue to trade
- Change of ownership of the sub-contractor
- Departure (or internal movement) of key personnel involved in the delivery of subcontracted activities (to be named at the outset)
- Any other significant changes that might affect the sub-contractor's ability to meet its contractual responsibilities.

The above situations must be reported to the University as soon as is practicable, but no later than 5 working days after they become known to senior management of the sub-contractor, unless prevented by law for any reason.

On learning about such changes, either from the sub-contractor or via another source, the University will review the arrangement and, where there is a perceived risk, reserves the right to seek alternative provision of services to ensure continuity for learners.

### **7 Renewal or Termination**

At least 3 months prior to any period whereby the University would be required to provide notice to terminate the sub-contract, Educational Partnerships will call a meeting of relevant colleagues to review the sub-contractor's performance.

The review of performance should consider the service standards and key performance indicators as established at the outset of the contract. It may also consider feedback from both the employer and students.

Any renewal decision must also take into account the likely intention to renew or terminate the 'parent' contract with the employer, as well as any changes in terms of ESFA rules which might affect the ongoing delivery of the sub-contracted arrangement. Educational Partnerships will collaborate with the Apprenticeship Sub-Committee to make a recommendation as to whether to terminate the contract, or to renew on the same or different terms, via the standard committees process.

## 8 Reporting and Auditing Requirements

### 8.1 External Reporting and Audit

Where the University finds issues as set out in the rules as part of its quality assurance and monitoring regime of any sub-contractor, it will report such instances to the ESFA. The value of sub-contracted provision will be monitored by Strategic Planning and Performance and where the total apprenticeship contracts with the University's sub-contractors exceeds £100,000 in any one financial year, the University will arrange for an annual report to be produced by an external auditor, to provide assurance as to arrangements for the management and control of such contracts. A report from the external auditor is provided to the ESFA by 31<sup>st</sup> July each year, or at a frequency determined by ESFA.

The University must submit a fully completed subcontractor declaration twice during each Academic year. The first declaration must be made by 31<sup>st</sup> October and the second declaration must be made by 30<sup>th</sup> June. All subcontractors will be included on the returns, including those that are not required to be on APAR (due to the exception process of the de-minimis)

A nil return will still be made in years where no sub-contracting arrangements have been in place.

The University will inform ESFA if sub-contracting arrangements change in the year and will update their subcontractor declaration in line with the Apprenticeship Funding Rules.

### 8.2 Internal Reporting

Finance and Resources Committee will receive an annual report to ensure Governor oversight of sub-contracted activity, the rationale behind the decision to sub-contract for each programme and the overall value of sub-contracted provision.

Risk registers are reported regularly as per the [Risk Policy & Appetite Statement](#)

The Apprenticeship sub-contracting Contract Tracker document and Annual Contract Update will be reported to Apprenticeship Sub-Committee on an annual basis coinciding with the yearly due diligence process.