

## Government consultation on reforms to subcontracting education for learners over 16

### Response of the Association of School and College Leaders

#### A. Introduction

1. The Association of School and College Leaders (ASCL) represents over 19,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million young people in more than 90 per cent of the secondary and tertiary phases, and in an increasing proportion of the primary and further education and skills phases. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation. Subcontracting forms part of the provision of many of our FE College members, and is an important element of their overall programme. We have many members whose colleges use subcontracting to enhance the opportunities for young people and adults, fill gaps in niche provision, support better access for learners and offer entry points for disadvantaged groups – and have done so for many years.
3. We understand that the ESFA wishes to strengthen oversight of subcontracting by eliminating poorly managed provision. However, we advise caution in the introduction of major changes to subcontracting agreements when it is acknowledged by ESFA that 576,000 learners benefit from this type of provision. The 674 prime contractors, who currently subcontract to 2,288 subcontractors, are already held responsible for the quality assurance and financial arrangements of the programmes on which students are enrolled. Additional requirements may make this type of provision untenable in the future.

#### B. Proposals for change

##### Proposal 1: Ensure that subcontracting adds value

**To what extent do you agree or disagree with the proposal to introduce a reason for subcontracting that is approved by the Governors or Board and published on the lead's website?**

4. **We agree** with the proposal to require a reason for subcontracting to be published once approved by the lead contractor's Governors or Board. **However**, the rationale for subcontracting, while needing to be clear, should not be constrained within the five objectives set out by the ESFA if it is agreed by the lead's Governors or Board. The five objectives should be advisory rather than compulsory.

5. We agree that subcontracting must add value, but added value may arise without meeting any of the five objectives proposed to be set out in the agreement with ESFA.

### **Proposal 2: Limiting subcontracting at geographical distance**

**To what extent do you agree or disagree with the proposal to introduce stronger criteria, including prior approval for distance subcontracting?**

6. **We agree** with the proposal to limit geographical distance in subcontracting. **However**, while we agree that there should be a limit on geography, the “rule of thumb” example given of limiting distance to one hour away from the prime contractor by car is confusing.
7. The limit could involve a five-mile journey in a congested area or a 70-mile journey by motorway. We believe that it is better to agree on a distance – possibly 50 or 60 miles – by any means of transport, including public transport.
8. **We do not agree** with the proposal to prior approve distance subcontracting. We believe the requirement for prior approval is restrictive, especially if the subcontracting has already been successfully delivered over some years. We accept that ESFA wishes to approve new distance arrangements, but we believe requiring lead contractors to justify arrangements for retaining existing subcontractors is unreasonable. This is particularly the case if these arrangements have existed for some time, as ESFA will have been properly monitoring those arrangements in the past.

### **Proposal 3: Controls on the volume of subcontracting by a lead**

**To what extent do you agree or disagree with the proposal to introduce volume control of provision that can be subcontracted?**

9. **We neither agree nor disagree with this proposal.** We note that it is intended to limit the volume from 25% in 2021/22 to 17.5% in 2022/23 and to 10% in 2023/24. While we understand and agree with the need to control volumes, the limitations in Proposal 3 seem arbitrary and rather meaningless in the context of the variation in size of providers, with the largest providers being able to subcontract millions of pounds of provision and much smaller providers being able to subcontract very little, irrespective of whether they meet all the objectives for adding high value by subcontracted provision. The proposed reduction in volume of subcontracting over the next three to four years may be counterproductive and inequitable, as far as new government initiatives are concerned.

### **Proposal 4: Restricting whole programme subcontracting**

**To what extent do you agree or disagree with the proposal to require prior agreement from ESFA before entering into whole programme subcontracting arrangements?**

10. **We neither agree nor disagree with this proposal.** We **do not agree** that whole programme subcontracting distances the learners from the lead provider. Lead providers are required to quality assure subcontracted provision, making learners very aware of the lead provider. This arrangement already occurs with HE providers “subcontracting” first and masters degrees, and it is therefore very limiting to expect further education providers not to use similar measures.
11. Until the procedure resulting from this proposal is clear, we cannot agree or disagree with it.

### **Proposal 5: Restricting the volume and value of ESFA funds held by a subcontractor**

**To what extent do you agree or disagree with the proposal to introduce volume controls on the value of ESFA funds that can be held by a subcontractor?**

12. **We neither agree nor disagree with this proposal.** If the quality of provision is good or better, there should be no reason to restrict either the volume or value of funds held by a subcontractor.
13. Please also see our response to Proposal 4.

### **Proposal 6: Sports subcontracting**

**To what extent do you agree or disagree with our proposal to require a direct contractual relationship between a lead provider and a third party specialist input?**

14. **We agree with this proposal. However,** we urge caution in its implementation. The ESFA's proposal to improve oversight, particularly with subcontracting of sports provision, could create problems and limit provision which is good or better. The proposal could suggest to the subcontractor that there is no need for their services, or the financial arrangement could be too costly to operate.
15. We understand that there are concerns around sports subcontracting. However, if not operated cautiously, this proposal could be counterproductive.

### **Proposal 7: Understanding compliance**

**To what extent do you agree that we should introduce one set of funding rules for subcontracting?**

16. **We agree with this proposal. However,** we advise caution. Creating one set of regulations is a necessary process, but the opportunity for common funding rules should not be used merely as a convenience or substitute for monitoring by ESFA, or as a means to bring about more restrictive arrangements for all subcontracting. This proposal may cut across otherwise very good and productive working partnerships which serve learners well.

### **Proposal 8: Publishing information about funding retained**

**To what extent do you agree or disagree with the proposal to extend the requirement to publish information about funding retained for all subcontracted provision and for ESFA to also publish this information annually?**

17. **We agree with this proposal.** This would introduce more transparency into the nature of subcontracting. **However,** it is not clear how this proposal will operate alongside Proposal 6. This point should be clarified prior to implementation.

### **Proposal 9: Introducing a standard for management of subcontracting**

**To what extent do you agree or disagree with the proposal to introduce an externally assessed standard for management of subcontracting?**

18. **We neither agree nor disagree with this proposal.** An externally assessed standard for managing subcontracting is a good idea. **However,** until we see the detail of the proposed standard, it is difficult to provide a more detailed response to this question.

## Proposal 10: Implementation

### To what extent do you agree or disagree with our proposal to implement changes in 2020/21?

19. **We disagree with the proposed timescale** as it only gives providers and contractors a very short period in which to make major changes to subcontracting. We suggest a start date of 2021/22 for any final changes made as a result of this consultation.

### Equalities analysis

20. We have **no evidence** on the potential impact of the proposals on those with protected characteristics. **However**, we suggest that Proposal 6 (sports subcontracting) may impact on people with protected characteristics, due to the increasing opportunities for people with disabilities to take part in sport.

### C. Conclusion

21. Our response is based on feedback from our members and others in the sector. It is provided with our school and college members and their students in mind. It does not take account of the views of subcontracting by lead Independent Training Providers.
22. We hope that the above information is helpful. Should you require further information please contact [anne.murdoch@ascl.org.uk](mailto:anne.murdoch@ascl.org.uk).

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