

Apprenticeships Subcontracting Policy - update Nov 2022 version 3

1. Introduction

For Sheffield Hallam University (the "University"), higher and degree apprenticeships continue to represent a natural extension of our work in supporting employers to develop the skills of their workforce on the basis of business need. The provision of higher and degree apprenticeships is a significant strand of the University's "Transforming Lives" strategy and a key initiative in the University's engagement with the South Yorkshire Mayoral Combined Authority's skills agenda and its strategic aspiration to promote widening participation in higher education. To meet these aspirations, the University is now delivering a number of higher and degree apprenticeships supported by funding administered by the Education and Skills Funding Agency (ESFA).

In accordance with the ESFA Funding Rules this policy defines the arrangements under which the University will subcontract ESFA funded higher and degree apprentice provision. It identifies key factors that the University will take into consideration prior to entering into a legally binding contract with an apprenticeship delivery subcontractor.

2. Introduction of a new ESFA Subcontracting Standard¹

The University acknowledges the introduction of the new Subcontracting Standard by the ESFA. In 2022/23 the University will continue to develop its existing processes to ensure compliance with the new standard- in anticipation of the introduction of a new external assurance activity² (based on the new standard).

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1007581/subcontracting_standard_guidance.pdf

² The new external assurance activity will replace the current audit certification process

3. Rationale for subcontracting

The University has developed the following rationale to guide policy and practice with respect to the subcontracting of apprenticeship provision:

Sheffield Hallam University is a large modern University committed to applied education and the development of high-level skills. The University's aim is to work with learners, employers, and other stakeholders to design and deliver innovative and high-quality apprenticeship programmes.

Apprenticeships are integral to the delivery of the University's Transforming Lives strategy³. They facilitate the development of innovative and coherent curriculum and enable the University to work with a range of stakeholders to enhance economic growth, educational health, and quality of life.

In most cases the University will deliver all aspects of the apprenticeship training and/ or on-programme assessment. However, in certain circumstances the University may consider subcontracting some elements of the provision to other suitable approved organisations. The University will carefully assess any proposal for subcontracting and will require the educational and other advantages to learners, employers, and other stakeholders to be clearly articulated.

The University has developed a set of principles for subcontracting, and these are used (as part of the University's normal governance/decision making processes) to inform the consideration of any proposal for subcontracting any elements of apprenticeship provision - where the University is the main provider⁴.

Sheffield Hallam University's principles for subcontracting

Sheffield Hallam University's default position is to meet learner and employer need using institutional resource, through direct delivery. Where that is not possible, or there is a compelling case to enhance the quality of the University's learning offer, a partnership and/or subcontracting approach may be considered⁵.

In all cases any subcontracting arrangements will aim to enhance the opportunities available to learners by one or more of the following:

- *widening access, participation, and progression for groups (including those with shared protected characteristics) that are hard to engage or geographically removed from the University*

³ Higher Degree Apprenticeships are identified in the University's strategic growth plan for its taught portfolio.

⁴ The principles do not relate to circumstances where the University might be a subcontractor for another main provider.

⁵ The University recognises that apprenticeship activity has particular compliance requirements – including new definitions in the EFSA Apprenticeship Funding Rules 22/23 for “subcontracting” and “Subcontractor” – see appendix 1

- *enabling access to specialist staff or other resources that would otherwise not be available*
- *bringing benefits to the region in terms of business innovation and knowledge transfer with the University and its stakeholders*
- *accessing funding as a result of a joint bid or similar for higher and degree apprenticeship funding in which the University is the main provider (for example to meet the needs of particular learners/employers/ sectors)*
- *satisfying particular needs (of learners/employers/main provider) including the consideration of impact on individuals with shared protected characteristics*

To ensure the quality of apprenticeship delivery, and compliance with ESFA requirements, the University will ensure that:

- *all subcontractors are on the Register of Apprenticeship Training Providers*
- *as a main provider the University maintains a direct relationship with employers*
- *the University delivers a substantial element of an employer's apprenticeship provision*
- *any arrangements using subcontractors comply with all appropriate professional and regulatory frameworks, including ESFA funding guidance.*
- *provision delivered via subcontracting is approved/ monitored via the University's processes and procedures (including internal arrangements for academic standards and quality⁶ / partner approval/ due diligence (initial and annual) and external arrangements such as compliance audit.*
- *subcontractors are appointed in line with current and relevant procurement regulations⁷*
- *second tier/ serial subcontracting is not used*
- *any proposal for subcontracting receives agreement in principle through the appropriate University governance (for example: the University's Apprenticeship and Work-based Learning Steering Group).*
- *any proposal for subcontracting demonstrates alignment with the University's published principles and rationale*
- *we will not enter into any agreement for brokerage- nor use subcontracting to meet short term funding objectives.*
- *no member of University staff, with direct or indirect financial interest in a subcontractor, undertakes any management control activities of that subcontractor*

4. Selecting and approving subcontractors

The University applies its existing processes for approving, managing and quality assuring collaborative partnerships and provision when selecting and managing subcontractors for apprenticeship provision - supplemented, as appropriate, where regulatory requirements (i.e., related to ESFA rules / Ofsted) necessitate alternative or additional approaches.

⁶ In 22/ 23 the University's Academic Quality and Standards team have supplemented existing quality and standards processes with an annual internal "Deep Dive"

⁷ Including Public Contracts Regulations 2015: <https://www.legislation.gov.uk/uksi/2015/102/contents/made>

Where delivery subcontractors are existing collaborative partners of the University, they will have already successfully completed the University's processes for partner planning and institutional approval. Through this process (supplemented by any additional processes required by regulatory requirements applicable at the time) the University collects, and risk assesses, information about a proposed partner or subcontractor to ensure: (i) the overall rationale for a proposed subcontract fits with relevant University policies and strategy (including the published rationale provided in section 2 above. (ii) the subcontractor's capacity and track record in providing high quality provision including that it is able to quality assure and improve relevant provision. (iii) appropriate legal, financial, quality and data protection due diligence checks are satisfied (including that the organisation is a legal person, it is not subject to legal proceedings to dissolve or wind up the company, it is up to date with submission of its statutory accounts and these have been subject to external audit by an independent and qualified auditor) and measures are taken to identify any conflicts of interest (iv) there are effective monitoring and performance review procedures to oversee the subcontract - as determined by the Directorate of Business Engagement Skills and Employability (BESE) and relevant University quality assurance processes - in line with regulatory requirements (v) there are monitoring triggers and processes to intervene and terminate subcontracts as necessary, including continuity arrangements to transfer or support current apprentices⁸.

Existing approved University partner organisations would normally be eligible to be considered for subcontracting arrangements, subject to confirmation that they can meet the specific requirements of the subcontract and can satisfy any additional regulatory requirements related to apprenticeships. Partners are required to supply information for approval, via University quality assurance processes, setting out key information relating to the proposed delivery and management of the apprenticeship. The roles and responsibilities of both partners are agreed through the approval process; these are then formally recorded within the contract for the partner.

Proposed subcontractors that are not already approved partners of the University may be considered for approval as a subcontractor via the University's partnership planning and approval process (supplemented by any additional processes to ensure compliance with any regulatory requirements applicable at the time). All new partnerships are subject to the University's quality processes for approval of new collaborative provision through the Institutional Approval process.

The University is responsible for ensuring that apprenticeship provision satisfies the regulatory requirements for subcontracting applicable at the time. As a main training provider, the University will:

- Agree the use of subcontractors with employers at the start of an apprenticeship
- Carry out due diligence checks on potential delivery subcontractors
- Enter into a written agreement with subcontractors prior to the start of apprenticeship delivery
- Ensure that second-level subcontracting does not take place

⁸ This includes making alternative arrangements for the delivery of education and training, protecting the audit trail, and/ or repaying the ESFA.

- Obtain an annual report from an external auditor⁹ if the total apprenticeship contract value exceeds £100,000 in any one financial year
- Take responsibility for the quality of all aspects and carry out regular assurance checks of their subcontractor's provision
- Provide delivery sub-contractor declarations in line with ESFA dates and manage any updates if arrangements or circumstances change during the year

The Directorate of Business Engagement Skills and Employability (BESE) at the University will be the single, central point of contact with the ESFA.

Staff involved in selecting and managing subcontractors will normally be those in the Directorate of Business Engagement Skills and Employability with experience in developing and managing academic collaborative partnerships

5. Managing subcontracting arrangements

The University will hold regular (nominally monthly) management meetings with all subcontractors to ensure that high quality delivery is taking place, in line with the requirements of funding and regulatory bodies. Management meetings with subcontractors will include consideration and monitoring of learner progress, safeguarding, "Prevent" duty and other matters contributing to the successful delivery of the apprenticeships.

6. Fees and charges

The University will normally apply fees for the management of the apprenticeship and for supporting any academic provision. Further additional charges may be negotiated between the subcontractor and the University to reflect particular additional services or support the University is providing to apprentices and their employers. These fees will reflect the University's costs in procuring and managing subcontracts and the associated apprenticeship provision and in normal circumstances will not exceed 20% of the overall contract.

a. funding retained for quality assurance and oversight

In consideration of the fee the University will normally provide the following support to the subcontractor:

- Subcontract management
- Monitoring of quality, standards and compliance related to the subcontract
- Review and enhancement for the apprenticeship
- Collating learner and employer feedback

⁹ In line with the new ESFA Subcontracting Standard

- b. funding retained for administrative functions such as data returns

In consideration of the fee the University will also be responsible for:

- Learner administration – Apprenticeship eligibility requirements, enrolment and ILR data, funding draw-down, assessment and progression of validated provision
- Audit Compliance – Contractual paperwork and apprenticeship evidence pack

- c. charges negotiated between the subcontractor and the University

The fee may also reflect particular additional services or support the University is providing to apprentices and their employers such as:

- Support in recruiting learners where appropriate to the needs of the provision
- Support with learning, teaching and assessment (for example guidance and developing a community of practice)
- Employer support ongoing throughout the apprenticeship programme including End Point Assessment
- Sharing of good practice
- Providing advice and guidance to employers and apprentices on End Point Assessment Organisations

The University will provide potential subcontractors with full contractual terms to apply to all sub-contractor payments. Fees and charges will be in line with EFSA apprenticeship rules and standard University payment terms.

7. Publication of information and communications

Any substantial changes to this policy are subject to review and sign off by the Apprenticeships and Work Based Learning Steering Group on behalf of the University and are published on the University website. Minor changes and updates to ensure the currency and accuracy of the policy may be made by the policy owner and published on the website.

<https://www.shu.ac.uk/business/training-and-development/degree-apprenticeships/useful-resources>

This Policy and an outline subcontract are available to current and potential subcontractors at the point that discussions are opened for new or reviewed sub-contractor arrangements.

8. Review

This Policy is subject to annual review by relevant University Boards to ensure it continues to meet the University's needs and the requirements of the University's contract with the ESFA and all relevant regulatory bodies.

9. Appendices

Appendix 1: Definitions

The University notes the updated definitions of subcontracting in the latest version of the ESFA Apprenticeship Funding Rules (22/23)

Subcontracting

Any delivery to an apprentice's programme of learning by a separate legal entity. It does not matter if this is by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service.

Subcontractor

A separate legal entity or an individual (not an employee) that has an agreement (called a subcontract) with you to deliver any element of the education and training we fund. A separate legal entity includes but is not limited to companies in your group, other associated companies and sole traders. An individual could include a person who is a sole trader, self-employed, a freelancer or someone who is employed by an agency, unless those individuals are working under your direct management and control in the same way as your own employees. This does not include relationships between the provider and the end-point assessment organisation or the provider and other third parties providing services such as marketing.