

Sub-contracting toolkit for the learning and skills sector



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Version 2

alp association of learning providers

Supported by



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This toolkit was published by the **Association of Learning Providers (ALP)** and launched at the Minimum Contract Level Conference on 20 December 2010. ALP is a national membership organisation and is the recognised voice of independent learning providers who engage in government funded skills training and welfare to work programmes throughout England. The majority of its 570+ members are private, not-for-profit and voluntary third sector independent training organisations delivering government-funded skills and welfare-to-work programmes. In addition, within full membership there are also nearly 60 further education colleges. Collectively, ALP's members deliver most of the Employer Responsive provision in England. Membership is open to any provider committed to quality Work based Learning (WBL). As a national stakeholder, ALP works actively with all policy makers in government departments (e.g. DWP, BIS, DfE), Members of Parliament, and funding agencies, such as the Skills Funding Agency, National Apprenticeship Service, YPLA, Jobcentre Plus and LSIS.

ALP is supported in the production of this toolkit by the **Learning and Skills Improvement Service (LSIS)**, a sector-owned body that aims to accelerate the drive for excellence in the learning and skills sector, building the sector's own capacity to design, commission and deliver improvement and strategic change. LSIS is dedicated to working in partnership with all parts of the sector to build and sustain self-improvement and work closely with sector practitioners in the delivery of what LSIS provides. LSIS is responsible for developing and providing resources that help colleges and providers implement initiatives and improve quality. This is achieved by commissioning products and services, identifying and sharing good practice throughout the system, and providing tailored programmes of support.

The toolkit has been written by **Nick Linford**, Managing Director of **Lsect**, which is a new company specialising in post-16 funding, performance and data within the learning and skills sector. Services are delivered exclusively by Nick Linford, who spent six years as Director of Planning and Performance for Lewisham College and for more than four years has been playing a leading role in capacity building on the use of funding, audit and management information in the learning and skills sector. Nick is also the author of the *Hands-on guide to post-16 funding* (www.fundingguide.co.uk) and the *Hands-on guide to post-16 performance and data* (www.dataguide.co.uk). For updates follow Nick on www.twitter.com/nicklinford

1. Introduction

In 2004, the Association of Learning Providers (ALP) first published its Provider Collaboration Toolkit, designed to highlight the advantages of (voluntary) provider collaboration, and looking at the pros and cons of various models of collaboration.

The world moves on of course, though the general concept of collaboration as a form of good business practice never went away. Indeed, in the current climate, as significant constraints in public spending mean that the various funding agencies are seeking to reduce back-office costs, the need to consider new business models is more pertinent than ever.



With this in mind we updated the Toolkit in November 2010. What the revised version did not really do, however, was address the consequences of the decision by the Skills Funding Agency to contract directly only with companies above a minimum financial level (initially £500K). Most, if not all, providers are now considering how to respond to this decision; some will become purely sub-contractors, some will move into a joint venture, aggregating contract values and nominating one contract lead organisation, others may exit the market altogether, some will undoubtedly grow.

ALP believes that all providers should have maximum clarity and understanding about the choices available to them. Collaboration remains one option all providers must consider as they develop their plans for the future, and the key to successful collaboration remains unchanged - it must be between willing partners, with due diligence, and should not involve unsuitable provider partners somehow being obliged to work together - a recipe for poor performance and bad business practice on all sides. With support from the Learning and Skills Improvement Service (LSIS) therefore, we have produced a new version of the collaboration toolkit - one written with the current landscape very much in mind and taking providers through the minimum contracts level debate from policy to implementation level, to help them fully understand the ramifications of the various options available to them.

Whether the future of your business will be as a lead provider or a sub-contractor, this toolkit offers practical help on sub-contracting agreements and what to consider before and during programs of delivery. In doing so, it keeps at its core the aim of driving up the quality of the training you deliver to your learners.

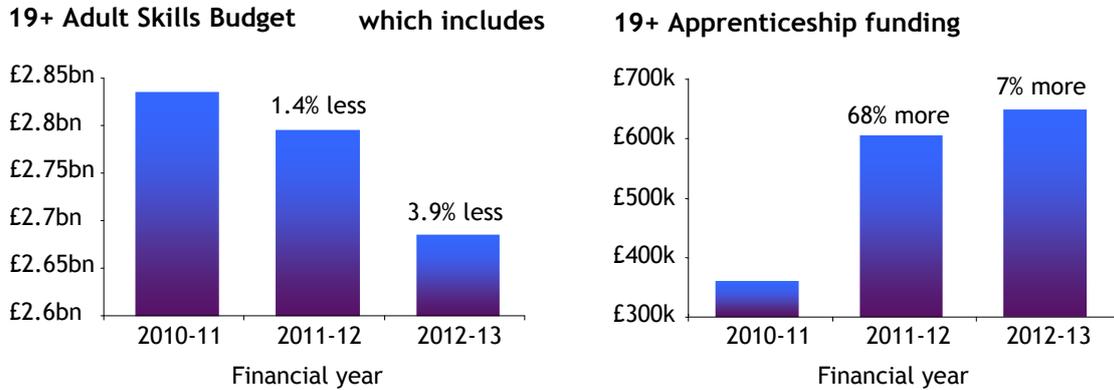
Graham Hoyle OBE, Chief Executive
Association of Learning Providers

2. New policy context

In November 2010 the Government published their *Skills Strategy*¹, which included plans to reduce the Adult Skills Budget by 25% over the next four years. Within employer-responsive provision nearly all Train to Gain (TtG) funding is to be switched to deliver 75,000 additional 19+ Apprenticeship starts by 2014.



Skills Funding Agency investment is planned as follows:



Arguably of more significance to lead providers and their sub-contractors is the fact that employer-responsive funding rates and eligibility criteria not only significantly changed in 2010/11, they will continue to do so in future academic years. The table below summarises these changes, based on information published in the Skills Strategy.

19+ employer-responsive funding rate and eligibility changes

| 2010/11 | 2011/12 | 2012/13 | 2013/14 |
|---|---|--|--|
| <ul style="list-style-type: none"> ~ 6% rate reduction for TtG ~ 3% rate reduction for 19-24 Apprenticeships ~ 14% rate reduction for 25+ Appren (20% less than 19-24) ~ Introduction of 25% rate reduction for large employers (1000 employees) ~ Increased assumed employer-contribution from 47.5% to 50% ~ Non-first Level 2 co-funded instead of fully-funded ~ SfL weighting reduction from 1.4 to 1.2 (excl. Numeracy at Entry Level) ~ Introduction of SASE² from 1st April 2010 with minimum glh | <ul style="list-style-type: none"> ~ 4.3% rate reduction across TtG and 19+ Apprenticeships ~ No funding for ESOL ~ SfL weighting reduction from 1.2 to 1 (excl. Numeracy at Entry Level) ~ Non-entitlement Level 2 TtG funding only for SMEs (up to 250 staff) ~ Non-entitlement TtG Level 3 not funded | <ul style="list-style-type: none"> ~ New 'simpler' national funding methodology and formula ~ Level 2 entitlement only up to 23 (previously no age limit) ~ Level 3 entitlement only up to 23 (previously up to 24) | <ul style="list-style-type: none"> ~ Government backed loans to replace all Level 3 funding |

¹ Skills for Sustainable Growth: <http://tinyurl.com/3x8dz2h>

² Specification of Apprenticeship Standards for England: <http://tinyurl.com/34ed3qc>

The *Skills Funding Agency Guidance Note 6*³ confirmed that funding rate changes from 1st August 2011 will apply not only to new starts, but also for the on-programme instalments and achievement funding in 2011/12 for the learners that started in a prior year (carry-in).



- For 2011/12:
- ~ 4.3% lower funding rate for all carry-in instalments and new starts
 - ~ ESOL in the workplace will not be funded
 - ~ Non-entitlement Level 2 TtG carry-in will not be funded for employers with more than 250 staff
 - ~ Non-first Level 3 TtG carry-in will not be funded at all

Tip for lead providers and their sub-contractors

When planning delivery and adjusting monthly profiles ensure you take account of funding and eligibility changes for new starts as well as carry-in. What impact might they have on your co-funded fees, or should you deliver some provision without funding (100% fee)?

Minimum Contract Levels (MCL) of £500k in 2011/12

The Government's Skills Strategy had this to say about introducing MCLs:

“There is a correlation between our ambition for a more autonomous and efficient FE system and provider size. In an environment of declining budgets, it will become increasingly difficult for smaller providers to operate without realising the efficiencies of shared services or economies of scale through collaboration or sub-contracting. The Agency also needs to become more efficient and streamlined. In the 2010/11 academic year, around 40% of the direct contracts held by the Agency account for less than 4% of funding.

From the 2011/12 academic year there will be a MCL threshold of £500,000. This will be based on the 2010/11 academic year allocations. We would expect the threshold to increase over time. However, no decision will be made before the impact of applying the MCL in 2011/12 has been evaluated.

All providers falling below the MCL will receive a notional allocation for the 2011/12 academic year which they can take into the new arrangements. Where a provider chooses not to enter into new arrangements, they will be issued with a run-down contract to cover the costs of existing learners.

The Skills Funding Agency will publish guidance setting out the process and timescales for providers to present alternative arrangements and how these will be handled by the Agency.

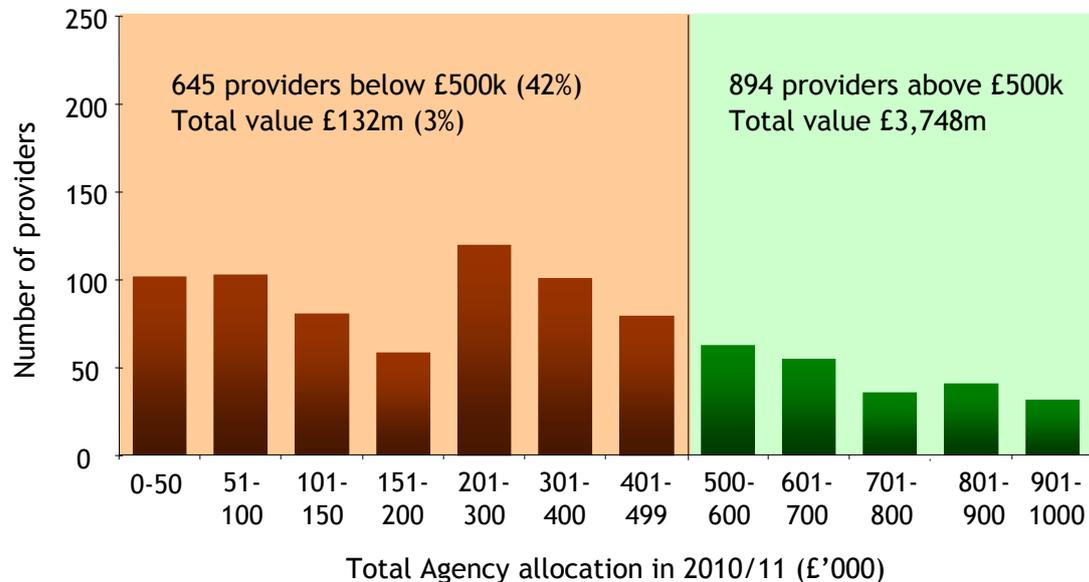
Where there is a risk of specialist provision being lost, or a significant impact on the choice available in particular localities for example, in rural communities, the Agency will consider whether alternative arrangements should be made.” For more detail see page 9.

³ SFA Guidance Note 6 v2: <http://tinyurl.com/2ugc9t5>

3. Implications

The introduction of a £500,000 Minimum Contract Level (MCL) in 2011/12 will result in approximately 40% of directly funded providers losing their contract with the Skills Funding Agency. This can be seen in the graph below, which takes figures from the Agency allocations spreadsheet for 2010/11, as at the 22 September 2010⁴.

Analysis of 2010/11 Agency allocations up to £1m⁵



These figures also highlight the point made by Skills Funding Agency, that at present 42% of the contracts account for just 3% of the total £3,880m being distributed. It is therefore unsurprising that the over-riding reason for introducing MCLs is to reduce the administrative costs associated with managing these contracts.

Partnership models

It is anticipated that many of the providers who receive a notional allocation below £500,000 for 2011/12 will wish to continue delivering their provision, and therefore need to enter sub-contracting arrangements with one of the larger providers.

There are alternative partnership models to sub-contracting, such as one which is 'partner-assisted'. A partner might assist and be rewarded by providing:

- ~ Marketing, information advice and guidance and recruitment services
- ~ Online learning platforms and other learning materials
- ~ Facilities and temporary or full time staffing
- ~ Support with components of a qualification or Apprenticeship framework

However, it seems likely that when small contract providers lose their direct claim status they will still want to be 'actively engaged in the delivery and the control of teaching to learners'. This is defined as third party sub-contracted provision by the Skills Funding Agency, as outlined in their Classification of different partnership and delivery models⁶.

⁴ Agency 2010/11 allocations spreadsheet as at 22nd September: <http://tinyurl.com/2u4n4gm>

⁵ In reality fewer providers will be in scope based on exclusions. However at the time of writing the policy was in development (such as 16-18 Apprenticeships). See page 9.

⁶ ILR Funding Compliance Advice and Audit Guidance for Providers: <http://tinyurl.com/3a6wcq2>

Looking for a sub-contracting partner?

Once the Skills Funding Agency confirms the final MCL policy and associated guidance for 2011/12 providers should know whether they are to lose their direct claims status. At this point the provider with a notional allocation, should they wish to enrol new starts in 2011/12, will need to find a lead provider with whom to sub-contract. Similarly, potential lead provider will be looking at the opportunities MCLs create.

Providers, large and small, should not wait to be approached. Many will already know who delivers or could deliver provision in their locality, and partnership dialogue should start as soon as is practicably and commercially possible.

Tip for lead providers and their sub-contractors

Do you need to find a lead provider or a sub-contractor? Why not use the 2010/11 Agency allocation spreadsheet (<http://tinyurl.com/2u4n4gm> & <http://tinyurl.com/3ajeckbm>) to look for potential partners, and the UKRLP website to find their contact details (www.ukrlp.co.uk).

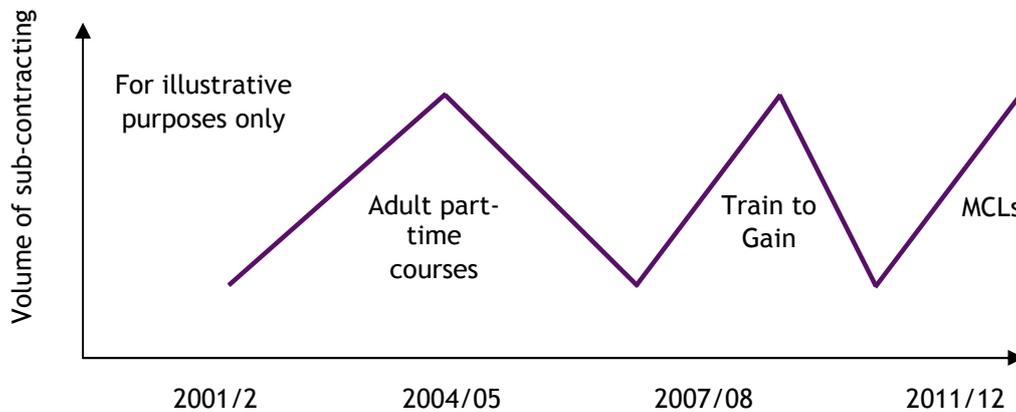
Sub-contracting check-list

In deciding whether or not to enter a sub-contracting arrangement, both parties should consider the use of a check-list, possibly with a scoring system, to support the decision. A checklist for the sub-contractor, such as the one below, can also form part of any due diligence process for the lead provider. A scoring system, which could be weighted for particular questions, may help make the most well informed decision.

| No. | Sub-contractor checklist question | Score (1-5) |
|-----|---|-------------|
| 1. | Does the sub-contracted provision compete or complement with provision delivered by the lead provider? | |
| 2. | Is the lead partner offering more than a one year contract? | |
| 3. | What percentage (or how much) of the funding does the lead partner require as a management fee? | |
| 4. | Is the lead partner offering any additional services (such providing learners with access to their learning centres)? | |
| 5. | Is the lead partner financially strong with an established reputation for delivering high quality provision | |
| 6. | Does the lead provider have successful experience of working with sub-contractors? | |
| 7. | Are there likely to be additional and future sub-contracting and or partnership opportunities? | |
| 8. | Is the communication and management structure of lead provider both clear and supportive? | |

4. Risk

Sub-contracting is neither new to the learning and skills sector in England, nor has it always been associated with high quality provision and value for money. Before considering the risks in some detail it is worth taking a brief look at the recent history of sub-contracting, and the way it has responded to Government policy of the day.



Sub-contracting became increasingly popular as adult part-time provision expanded shortly after the Learning and Skills Council was established in 2001 (including the creation of the short-lived Individual Learning Accounts as well as the more resilient *learnirect*). As the volume of provision that was sub-contracted grew it became clear that in a few cases this ‘arms-length’ approach risked paying for poor quality, led to high top-sliced management fees and it was on occasion even fraudulent. As a result, colleges which sub-contracted more than 5% of their funding (called ‘franchised provision’ at the time) were required to complete an additional section of the Financial Management and Governance Self-assessment Report Questionnaire. For example, it was expected that governors received at least termly reports on the sub-contracted provision.

Yet as priorities shifted away from short courses and overall adult mainstream funding reduced from 2004/05, so did the volume of sub-contracted delivery. Essentially, many colleges either cut the provision in line with allocation reductions or brought the provision back in house. This trend was reversed in 2007/08 when the Train to Gain programme was rolled-out nationally. The rapid expansion required and facilitated many new providers to enter the learning and skills sector, often on a sub-contracted basis. In more recent years many sub-contracted arrangements have either ended or come under-strain as the Train to Gain budget was quickly over-committed, and is now being wound down. Clearly, as shown in the graph at the top of this page, the expectation is that the introduction of Minimum Contract Levels will again increase the volume of sub-contracting.

Risks associated with sub-contracting

As identified above, sub-contracting is not new and nor are the potential risks that it can create. The Skills Funding Agency point out that: “Past experience indicates that sub-contracting significant levels of provision is associated with higher levels of risk. This is the case irrespective of whether the sub-contractor is one of the Lead Provider’s own subsidiary companies, a joint venture company or an organisation that is independent of the Lead Provider. Higher levels of risk are also associated with significant levels of provision being delivered away from the Lead Provider’s main site(s) or outside its normal recruitment.”⁷

⁷ Apprenticeship Funding Requirements 2010/11 v2: <http://tinyurl.com/2w5ltke>

Risks for the lead provider

The lead provider retains ultimate responsibility for all aspects of the provision that it is contracted to deliver, including any elements that it chooses to sub-contract. The risks for the lead provider include the sub-contractor:

- ~ Achieving poor success rates, which reduces the lead provider's overall performance
- ~ Generally putting the lead provider reputation and contract in jeopardy
- ~ Not achieving funding targets, leading to lower than budgeted management fees and reductions in future allocation
- ~ Underestimating the costs of administering the provision and contract
- ~ Further sub-contracting without the written approval of the Agency
- ~ Competing for employers and learners with other contracted provision
- ~ Failing to complete the contract period, leaving learners on-programme

Risks for the sub-contractor

The sub-contracted provider does not have a direct contract with the Skills Funding Agency, which means the terms and conditions within the contract with the lead provider will be critically important to agree and achieve. Perhaps the biggest risk for a sub-contractor is that at the end of the contract period the lead provider chooses not to renew the contract. The contract period and options for extensions are something that the sub-contractor, particularly those bringing notional MCL allocations, should consider carefully.

Pick your partners wisely

Before entering into any contractual agreement both the lead provider and sub-contractor should carry-out a rigorous due diligence process. There are a number of online sources of information that providers can access to find out more about their potential partners. Ultimately, it is also necessary to complete the Skills Funding Agency sub-contracting declaration spreadsheet.⁸

Tip for lead providers and their sub-contractors

Independent sources of information about providers:

- ~ Have they been inspected? (www.ofsted.gov.uk)
- ~ Are they on ACTOR? (<http://tinyurl.com/33bpclx>)
- ~ What are their FfE scores? (<http://tinyurl.com/26w85ex>)
- ~ Have you seen their last set of financial accounts?
- ~ Is their provision safely above MLP thresholds?

It should be remembered that there are significant levels of public funding being allocated with risk that needs to be managed. In the main these risks ultimately rest with the lead provider, which may be reflected in the management fee. Regular sub-contracting visits and monitoring should be rigorous, and the Skills Funding Agency will undertake or commission funding audits. Unfortunately, 'a small number of providers have achieved financial gain at the expense of both learners and the public purse, whether through ignorance or design...and new allegations continue to be made and do not appear to be reducing.'⁹ In extreme cases the Serious Fraud Office could even be involved, and it is not unheard of for corrupt practices to result in jail sentences¹⁰.

⁸ Sub-contracting declaration spreadsheet: <http://tinyurl.com/2c79g85>

⁹ Higher Risk Providers & Persons and Agency Contracting: <http://tinyurl.com/39z4cwn>

¹⁰ Four sentenced in Shropshire training contracts bribery and money laundering case: <http://tinyurl.com/346xat7>

5. Reward and the latest official guidance

The primary purpose of the MCL policy is to significantly reduce the number of lead providers, and therefore make administrative savings for the funding and inspections agencies. These savings include:

- ~ Fewer Agency staff required to manage individual contracts
- ~ Fewer users of, and individual payments from, the Agency's Single Account Management System (SAMS)
- ~ Reduction in the number of Ofsted visits and inspections
- ~ Reduced number of individual funding audits
- ~ No need to continue to support Provider On Line (POL) for small providers

Wherever possible these costs would represent real savings, and not simply passed on to the lead provider that now manages the sub-contractor.

Successful collaboration between providers can also produce rewards such as:

- ~ Protecting high quality and often specialist provision
- ~ Making savings through shared or sub-contracted services (e.g. IT)
- ~ Improving progression pathways between providers and provision
- ~ Reducing the risk of different providers approaching the same employer
- ~ Providing a structure in which to share good practice
- ~ Working together could include creating packages of skills developments
- ~ Providers collaborating may be better placed to influence policy and planning

Tip for the sub-contractor

The rewards associated with collaboration will be short-lived if the lead provider chooses to go it alone at the end of the contract. Therefore, sub-contractors should consider only entering into longer-term contracts (or include guarantees of renewal) to ensure they have access to the delivery funding for more than just twelve months.

The latest official MCL guidance

The degree and types of reward associated with the MCL policy will to a great degree be determined by the implementation of the policy. As this develops over the coming months this section of the toolkit will be updated. The LSIS support programme have also produced a series of related fact-sheets, which can be downloaded from the Excellence Gateway¹¹.

The most recent guidance on MCLs was published in the Skills Funding Agency Guidance Note 6¹², which includes the list of providers that are **exempt** from the MCL policy:

- ~ General FE, sixth form and specialist colleges (e.g. of Art and Design)
- ~ Large employers contracted to the National Employer Service
- ~ Higher Education Institutions

Also, 'the Skills Funding Agency is currently in discussions with the Department for Education about the application and impact of MCL on 16-18 apprenticeships'.

¹¹ The LSIS Excellence Gateway: www.excellencegateway.org.uk

¹² Skills Funding Agency Guidance Note 6: <http://tinyurl.com/2ugc9t5>

The MCL policy key dates within the current guidance are:

| Dates in 2011 | Action |
|------------------------|---|
| January | Providers affected by MCL give the Skills Funding Agency an initial indication of their planned course of action. This might be new delivery arrangements or a run-down contract. |
| February | Minimum Levels of Performance outcomes agreed (see page 15) |
| 31 st March | Final funding calculations issued to providers, including adjustments for MLPs. Providers affected by MCL to give final and formal notification of their new arrangements and where necessary submit on ACTOR Second ACTOR freeze date, to include new arrangements |
| April | Providers using ACTOR notified if they have been successful |
| 31 st May | Allocations to lead providers adjusted to take account of new delivery arrangements that have been formed |
| 30 th June | Contracts and funding agreements issued to direct contractors for 2011/12 |
| 31 st July | Learner data migrated to lead providers and contracts completed |

Approved College and Training Organisation Register (ACTOR)

The Skills Funding Agency introduced ACTOR through its e-tendering portal (BRAVO) in October 2010 as part of its procurement of education and vocational training services. Providers that do not have a contract from the Skills Funding Agency for 2010/11 and were not on the Qualified Provider Framework following its last freeze in September 2010 have to complete the ACTOR Due Diligence Questionnaire (PQQ) and those ITTs that cover the programmes that they wish to offer. Providers that do have a contract from the Skills Funding Agency for 2010/11 and/or were on the Qualified Provider Framework following its last freeze in September 2010 do not have to complete the PQQ but they do need to complete the ITTs that cover the programmes that they wish to offer. The deadline for the first ACTOR freeze is now 5pm on the 14th January, and submissions can be altered at any time until the deadline.

Tip for lead providers and their sub-contractors

The ACTOR submission before 15th January is critical for all lead providers. However, the submission will need to be updated before 31st March to include any new sub-contracting arrangements as a result of introducing the MCL policy. It can be confusing determining which type of submission to make, so always consult your Agency Account Manager and receive advice in writing.

Paragraph 72 through to 90 and Annex A within the Guidance Note 6 is dedicated to MCL policy and ACTOR, so they have been attached to the end of this toolkit.

6. Working principles and more official guidance

The Association of Learning Providers feel the following working principles and best practice apply to all models of collaboration and contractual arrangements, including sub-contracting.

- ~ **Collaboration is a voluntary option**, in that the choice of partners with which to collaborate should never be imposed. No provider should be expected to consider collaboration with another provider as an option unless they feel it is in their - and, of course, their learners' - interests. Ideally collaboration needs to be *self-driven* as opposed to an imposed solution. Funding organisations will, of course, need to be satisfied that proposals are likely to deliver what they are paying for, and it will be important to demonstrate that any reservations about perceived performance are being properly addressed.
- ~ **A range of collaborative options is needed**. A 'one size to fit all' approach is undesirable and unfit for purpose. However, in developing this Toolkit, the emphasis has been on supporting sub-contracting arrangements as a consequence of the new Minimum Contract Level policy for 2011/12.
- ~ **Every aspect of the way in which the collaboration works needs to be open**, including:
 - ~ management costs
 - ~ choice of providers to deliver different aspects of the contract.

As a key stage in the development of any collaborative model, providers should agree those issues on which they feel openness and transparency will be critical to the success of the collaboration.

- ~ Collaboration should be driven by a desire to drive up quality. Providers are interested in buying in expertise from others who are recognised as excellent in carrying out particular functions - so long as this option is economically viable.
- ~ Generally, there should be no difficulties arising between the development of new collaborative arrangements and the continued application of the Common Inspection Framework (CIF), especially if the contract-holder continues to be responsible for the quality assurance of all parts of delivery and the progress of the learner.

Whatever arrangements providers wish to consider, much could be gained by benchmarking quality at the start of a collaborative arrangement through, say, self-assessment or a mock inspection.

- ~ Providers with a direct contract should have the authority to stop working collaboratively with a linked provider that fails to meet quality standards and achieve targets set out in agreed development plans.

Naturally, funders will need to be advised of any action proposed, but the final decision to terminate contractual arrangements with any linked providers that have failed to meet standards and volumes agreed in delivery plans should rest with the providers or legal entities holding contracts and accountable for their delivery.

Funders have the responsibility for nurturing and developing new providers in the market-place where they feel new types of niche provision are needed or that the capacity in delivering established programmes needs to grow.

This means that providers should not consider expanding their collaborative arrangements to include new organisations without the prior agreement of funders. At the same time, funders should always remember that collaboration is a voluntary option, and not assume that collaborative arrangements will always be ready to expand to include new providers that they wish to become involved.

Official guidance

It is vital that all partners have an intimate knowledge of the relevant sub-contracting guidance from the Skills Funding Agency. Below are the main four in the order they were published:

Skills Funding Agency Guidance Note 6 v2 <http://tinyurl.com/2ugc9t5>

Latest policy on Minimum Contract Levels for 20011/12

Also attached to the end of this toolkit.

2010/11 Apprenticeship Funding Requirements v2 <http://tinyurl.com/2w5ltke>

Sub-contracting Requirements (Section 8)

2009/10 LSC Funding Guidance v4.2 <http://tinyurl.com/yzvxx2w>

ILR Funding Compliance Advice and Audit Guidance for Providers (Section 6)

2008/09 ILR Funding Compliance Advice and Audit Guidance <http://tinyurl.com/3a6wccq2>

Advice on Provision Delivered with a Partner Provider (Section 3)

A key element within the guidance relates to controls testing.

The Skills Funding Agency clearly states that the lead provider will need to be reassured that they satisfy a control test, the key elements of which are:

- ~ The lead provider is able to ensure that learners are enrolled on appropriate programmes in the name of the Lead Provider not the sub-contractor(s)
- ~ There is a written learning agreement, entered into at the time of enrolment which is prepared and agreed with each learner and that reflects the outcome of the learner's initial guidance and assessment
- ~ A learning programme and its means of delivery have been clearly specified by the lead provider
- ~ The lead provider is in control of the delivery of the education and/or training
- ~ There are arrangements for assessing the progress of individual learners
- ~ Procedures exist for lead providers to regularly monitor the delivery of programmes provided in their name.

Similarly, due diligence features at length in the official guidance.

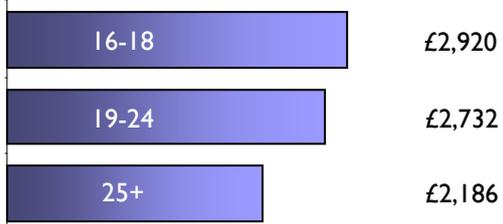
It is not only good practice to undertake a due diligence process before entering into a new partnership, it is also a Skills Funding Agency requirement. Section 8.0.6 within the 2010/11 Apprenticeship Funding Requirements v2 includes a comprehensive list of factors that should be taken into account. Also, 'Colleges and publicly-funded bodies must follow relevant UK and European regulations when procuring the services of a sub-contractor for education and vocational training services.'

See Annex D for what might be included in a sub-contractor contract.

Annex A : A brief guide to the employer-responsive funding formula

Apprenticeships and Train to Gain are funded in England by the Skills Funding Agency using an ‘employer-responsive’ funding formula. The funding formula is applied to each individual qualification within the relevant Framework.

The funding formula for 2010/11

| | | | | | | | |
|--|--|-------|--------|-------|--------|-----|--------|
| Standard learner number (SLN) | The SLN represents the size of the qualification, which is ‘listed’ within the online Learning Aim Database for the relevant year. For example, the SLN for a Certificate in Engineering might be 1.067 SLN | | | | | | |
| X | | | | | | | |
| National Funding Rate (NFR)* * The Train to Gain NFR in 2010/11 is £2,732 | The National Funding Rate is set each year and applied based on the age of the apprentice when they start their Framework. The Apprenticeship national funding rates for 2010/11 are as follows:  <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>16-18</td> <td>£2,920</td> </tr> <tr> <td>19-24</td> <td>£2,732</td> </tr> <tr> <td>25+</td> <td>£2,186</td> </tr> </table> | 16-18 | £2,920 | 19-24 | £2,732 | 25+ | £2,186 |
| 16-18 | £2,920 | | | | | | |
| 19-24 | £2,732 | | | | | | |
| 25+ | £2,186 | | | | | | |
| X | | | | | | | |
| Programme Weighting Factor (PWF) | Like the SLN, the programme weighting is assigned each year to the relevant qualification and can be found on the Learning Aim Database. Programme weightings recognise that irrespective of size, some qualifications are more costly to deliver than others. | | | | | | |
| X | | | | | | | |
| Disadvantage uplift (DU)* * Not used for Train to Gain | The disadvantage uplift is based on the learner home postcode, and therefore applied equally to all qualification within their Framework. It ranges from 8-32 per cent for learners living in the 27 per cent most deprived areas of England. | | | | | | |
| X | | | | | | | |
| Area Cost Uplift (ACU) | The area cost uplift recognises that the relative cost of delivery in London and the South East is higher than the rest of England. It is applied based on the delivery location of each individual qualification and rises from 1 per cent in parts of West Sussex to a maximum of 20 per cent for the inner-ring of London boroughs. | | | | | | |
| = | | | | | | | |
| Funding (£) | In a limited number of cases the percentage of the funding earned is locally negotiated. In addition, a large employer factor had been introduced in 2010/11, which reduces funding by 25 per cent where the employer of the apprentice has more than 1000 employees. | | | | | | |

Note: Rates and eligibility changes for 2011/12 can be found on page 3 of this Toolkit, but always consult the latest Skills Funding Agency funding and eligibility guidance for Train to Gain¹³ and Apprenticeships¹⁴.

¹³ Train to Gain documents: <http://tinyurl.com/3xdsdzg>

¹⁴ Apprenticeship documents: <http://tinyurl.com/38df52d>

Employer Contribution Percentage

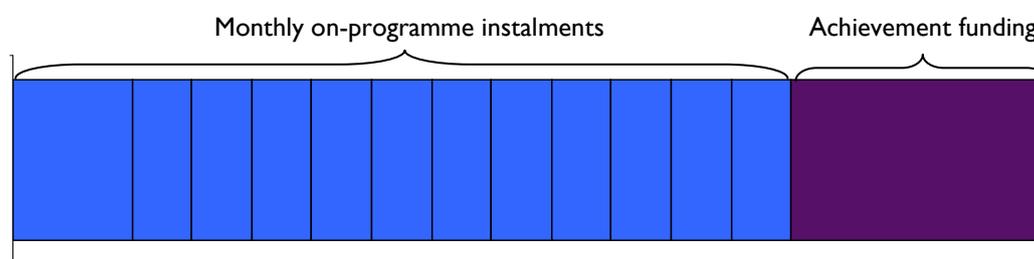
Although 16-18 year-olds are fully-funded, apprentices aged 19 or over at the start of their Framework (with limited exception) are funded at only 50 per cent in 2010/11. This is also the case for some Train to Gain learners. It is expected that this shortfall in funding is met by the employer in the form of a 'co-funded' fee contribution, although this is at the discretion of the provider.

Monthly on-programme instalments and achievement funding

The funding for each qualification is paid to apprenticeship providers on a monthly basis during the period of training. It is calculated by applying the funding formula to apprenticeship provider enrolment data, which they submit online every month.

The amount paid each month for each qualification is arguably complex, because the first month is a double instalment and achievement funding, representing 25 per cent of just the main qualification, is held back and only paid once the full Framework has been achieved. For Train to Gain 25 per cent of all the funding is for achievement.

For the purposes of demonstration, funding instalments for the main qualification over a year might look like this:



It is also worth noting that:

- if the qualification duration is more than 24 weeks and the learner is on-programme for less than six weeks then the learner is not recorded as a start and zero funding is earned;
- instalments are calculated using rates within the funding formula for the relevant academic year. This means that learners who started in 2009/10 that 'carried-in' to 2010/11 are likely to earn different instalment values from August onwards.

Apprenticeship Framework funding example

The table below lists example qualifications and 16-18 year-old rates in 2010/11 for an Advanced Apprenticeship in Engineering. In this example, the trainee lives in an area where the disadvantage uplift is 8 per cent and the delivery location is within the outer-ring of London boroughs, for which there is an area cost uplift of 12 per cent.

| Qualification (and level) | SLN | NFR | PWF | DU | ACU | Funding |
|-----------------------------------|----------|--------|-----|------|------|----------------|
| NVQ in Engineering (3) | 2.257 | £2,920 | 1.5 | 1.08 | 1.12 | £11,958 |
| Certificate in Engineering (3) | 1.067 | £2,920 | 1.3 | 1.08 | 1.12 | £4,899 |
| Five Key Skill qualifications (2) | 0.08 x 5 | £2,920 | 1 | 1.08 | 1.12 | £1,413 |
| Total funding | | | | | | £18,270 |

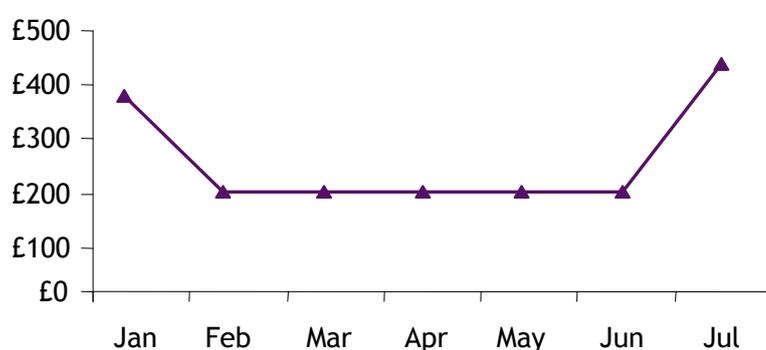
Annex B : A brief guide to the performance regime

It is important that both lead providers and sub-contractors understand the performance regime in which they operate, and consider including these within monitoring arrangements, as well as contracts.

Funding targets

Every Skills Funding Agency contract will come with an allocation which will include funding targets for 2011/12. These funding targets will be achieved by applying the national funding formula (see page 13) to the returned participation data (see page 17). It should be remembered that the funding is paid a month in arrears via on-programme instalments, with a double payment in month one and a final achievement instalment in the final month.

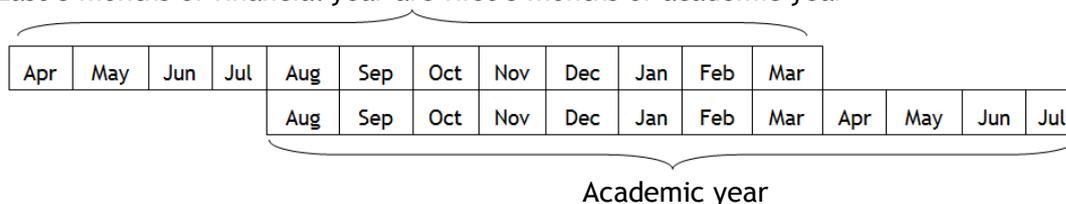
Example monthly funding instalments for an employer-responsive enrolment



In the example above the enrolment achieves within the academic year. However, where provision 'carries-in' to the next year then instalments contribute to a subsequent target and contract, and the new funding rates will apply. Whilst the funding agency only infrequent (e.g. quarterly) reviews, providers should monitor their delivery against monthly profiles carefully and adjust the plan where necessary.

It is also worth remembering that the Skills Funding Agency work to a financial year, which is why allocations also include an eight month and four month split. The implications of this should be considered carefully.

Last 8 months of financial year are first 8 months of academic year



Framework for Excellence (FfE)

The Department for Business Innovation and Skills have described FfE as 'a quantitative assessment of performance across all Further Education providers that will provide an accurate, independent picture of the performance of the FE sector, validated and supported by published data.' The FfE comparison website¹⁵ shows a summary report for each in-scope provider; a report for each of the published performance indicators; including Success Rates, Learner Destinations, Learner Views and Employer Views, where available and supporting data disaggregated as far as possible by age, level and sector subject area. Reports will also show comparative data for the four published performance indicators which will allow users to compare individual provider's scores against the range of scores obtained by all providers for each performance indicator.¹⁶

¹⁵ Framework for Excellence publication website: <http://ffepublication.skillsfundingagency.bis.gov.uk/>

¹⁶ From the Data Service website: <http://tinyurl.com/25wwqrv>

Qualification success rates

Success rates are a measure of attainment expressed as a percentage. For example, if the success rate was 80% this would mean that eight out of ten learners who started a qualification had passed (achieved a successful outcome). The success rate is also the retention rate (number completed divided by number started) multiplied by the achievement rate (number achieved divided by number completed).

Retention, achievement and success rates are used by:

- Providers to assess quality, set targets, monitor performance and as supporting evidence within self-assessment reports
- Commissioners, such as the Agency, to identify high performing providers as well as to manage underperformance
- The Skills Funding Agency (SFA) and Young People's Learning Agency (YPLA) as part of the funding methodology and formula
- Ofsted to help inform its judgements and grades
- Government departments to measure performance

Qualification Success Rate reports for 2009/10 learner-responsive, Train to Gain and Apprenticeship provision can be downloaded from the secure Provider Gateway.

It is important to remember that the success rates of a sub-contractor will form part of the lead provider's overall success rates.

Minimum Levels of Performance (MLP)

MLP reports were introduced in 2006 and consist of success rates with various performance thresholds for provision by duration, level and funding type. They are used by the commissioning agencies to identify and manage underperforming provision (IMUP). MLP reports for learner-responsive, Train to Gain and Apprenticeship provision are downloaded from the secure Provider Gateway.

The MLP thresholds as applied to 2009/10 success rates and used to commission 2011/12 provision is as follows:

| Programme/Qualification type | Minimum level |
|---|---------------|
| FE long qualification Level 1, 2 and 3 | 63 per cent |
| A-levels | 75 per cent |
| FE long qualification Level 4 or higher | 61 per cent |
| FE short qualification (all levels/5 to 24 weeks) | 65 per cent |
| Apprenticeships (full framework) | 53 per cent |
| Advanced Apprenticeships (full framework) | 53 per cent |
| Train to Gain | 68 per cent |

The success rates for a sub-contractor will form part of the lead provider's overall MLP report. See page 10 for when MLP reports will impact on 2011/12 allocations.

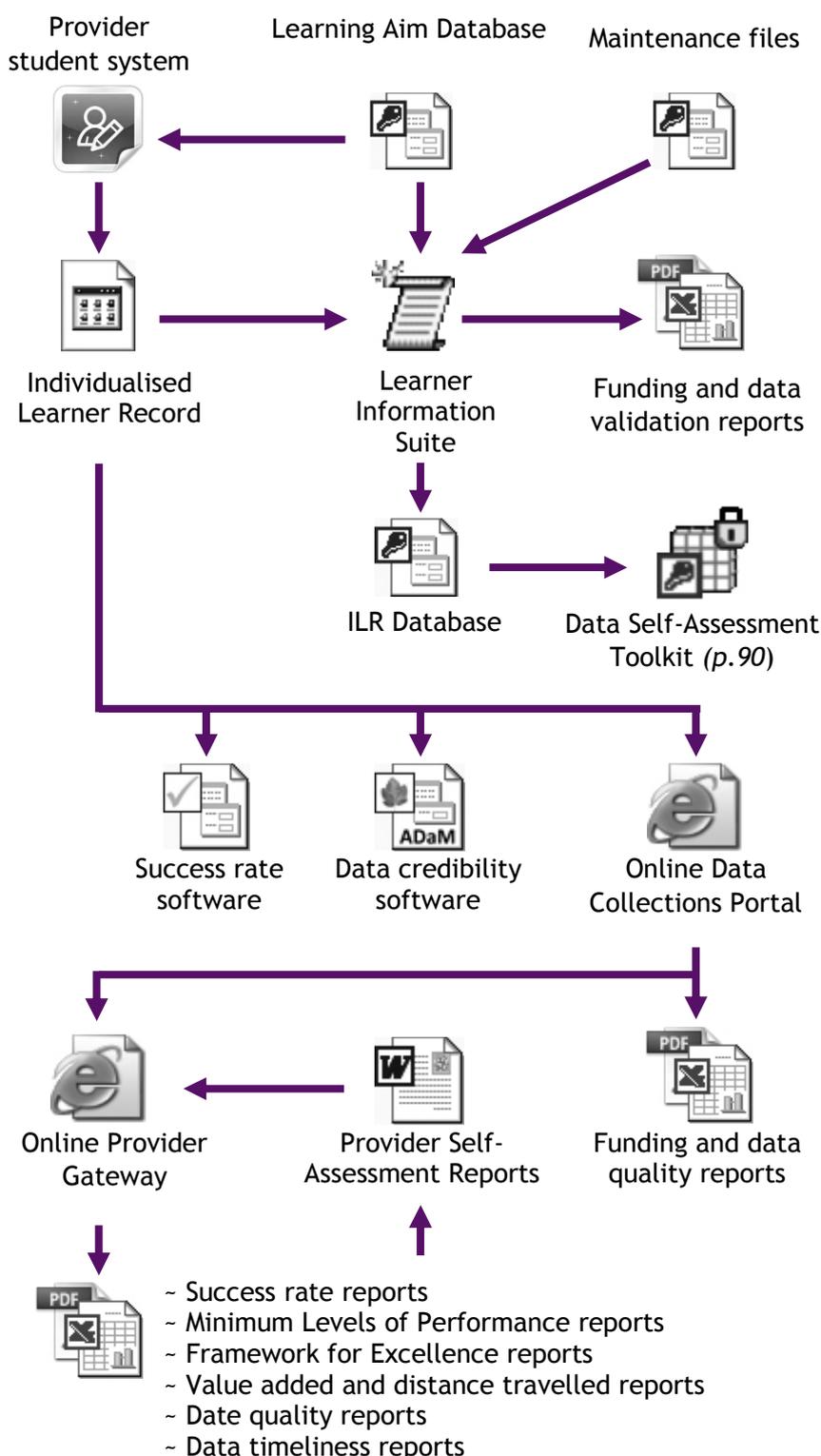
Ofsted

Whilst potentially less frequent, Ofsted continue to inspect and grade lead providers.

Annex C : Importance of data and data quality

Skills Funding Agency funding is dependent on the Individualised Learner Record (ILR) data which must conform to a national specification and is returned via an Online Data Collections Portal. This direct link between the data returned and the funding earned means that data and data quality is particularly important.

ILR data and associated reports ~ a flow diagram¹⁷



¹⁷ Amended from the Hands-on Guide to Post-16 Performance and Data (www.dataguide.co.uk)

Improving data quality is of increasing importance to the Skills Funding Agency, the *information authority* and the Data Service.

| Dimensions of data quality | |
|----------------------------|---|
| Dimension | Principles |
| Accuracy | In most cases data should represent what actually happened. However, in some cases, such as for success rates, the qualification recorded is based only on what was planned. |
| Completeness | Data should not contain invalid or missing data. This includes avoiding the use of codes for unknown, wherever possible. Provider completeness reports are published on the Provider Gateway after each ILR return, which are based on the ILR Annex P data quality standards. ¹⁸ The Unique Learner Number and Employer Identifier now need to be valid and in the ILR within 60 days of the start date. The Online Data Collection Portal will reject the funding for any enrolment where this is not the case. |
| Validity and credibility | Data should be recorded and maintained in compliance with the relevant rules and definitions. The Learner Information Suite (LIS) applies ILR validation checks, and the Data Self-Assessment Toolkit (DSAT) supports credibility checking. |
| Reliability | Data should be collected and processed consistently. |
| Timeliness | Data collection should be captured and returned as quickly as necessary to support processes for which it is collected. Following the introduction of employer-responsive timeliness standards (two months for a start and three months for an achievement) providers can now download reports after each ILR submission from the Provider Gateway. ¹⁹ |
| Relevance | Where data is captured in addition to that which is contractually required, it should be relevant to the purpose for which it is used. |

Also, in December 2010 the *information authority* published a 'good data management' guide with six data management principles and four good practice principles²⁰.

Data return deadlines from the *information authority*

The *information authority* publish a range of helpful calendars for the various data return deadlines²¹. This includes the facility to import the deadlines into MS Outlook.

Management Information (MI) Library from the Data Service

Could you make use of the new national MI Library, which includes reports such as the number of enrolments by provider and local authority in 08/09 and 09/10²²?

¹⁸ ILR Annex P Data Quality Standards: <http://tinyurl.com/2eblvqz>

¹⁹ ER timeliness reports launched: <http://tinyurl.com/2wvghm3>

²⁰ Data Principles: <http://www.theia.org.uk/News/LatestNews/principles.htm>

²¹ *Information authority* calendars: <http://tinyurl.com/33namm8>

²² Data Service MI Library: <http://mireportslibrary.thedataservice.org.uk/>

Annex D : Sub-contractor contract - checklist of contents

The contents of individual contracts should be tailored to individual circumstance. However, the following may prove a useful checklist, and The Office for Government Commerce provides model terms and conditions²³.

1. Agreement date and parties

Including the legal name of the lead contractor and sub-contractor.

2. Definitions

For example, “Academic year” means a year running from 1 August in one calendar year to 31 July in the following calendar year

3. Duration of agreement

Such as ‘Twelve months unless terminated in accordance with terms and condition of the contract’. Given the sub-contractor is handing over their allocation this section may include a clause regarding extensions.

4. Payment terms

Usually payment within 30 days of payment date ~ as per Procurement Policy Note in Office of Government Commerce Action Note 07/10 dated 25 March 2010

5. Price (Distribution of Income)

This might be the percentage of Skills Funding Agency instalment to be paid. In previous years the LSC have recommended no more than 15% retention of instalment funding by the lead partner. However, circumstances will differ so the percentage may be higher or lower. Importantly, the Skills Funding Agency ‘requires the retention of funds to be proportionate to the costs incurred’.

6. Funding compliance

Both parties must comply with the Skills Funding Agency Funding and Audit Guidance, such as making sure all the relevant forms, agreements, applications or other documents which are required to be sent to the Skills Funding Agency are, if necessary, completed and signed by the relevant authorised officer of the Sub-contractor.

7. Records and information

This would include maintaining and making available appropriate evidence, such as records of both attendance and non-attendance.

8. Control of the Programme(s)

The lead contractor ultimately is responsible and at all times to be in control.

9. Enrolment

For example ensuring appropriate initial guidance and assessment, individual learning plans, signed enrolment forms and how quickly the signed forms must be sent to the lead partner.

10. Delivery of provision, assessment and achievement

This would include who can and who cannot deliver provision, and the basis on which staff are employed. So CVs might need to be supplied and vetted by the lead partner.

²³ Office for Government Commerce: <http://www.ogc.gov.uk/>

This section would also include arrangements for when learners withdraw and or achieve, and how quickly learners should receive their certificates.

11. Equal Opportunities

This might say that the sub-contractor must comply with the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000) and Special Educational Needs and Disability Discrimination Act 2001 (incorporated into Part IV of the Disability Discrimination Act 1995). The lead partner may also have their own Equalities Policy which the sub-contractor would need to comply with.

12. Monitoring and Compliance

For example the lead partner can attend any part of the sub-contracted provision, and access facilities and paperwork and that agreed performance targets, such as delivery profiles and Minimum Levels of Performance, in the agreement annex are achieved.

13. Health and Safety Liability

This might include notifying the lead partner of any accidents, and that relevant legal requirements relating to health and safety need to be complied with. It may include a clause such as: “The sub-contractor will indemnify the lead partner fully in respect of any liability as a result of any act or omission on the part of the sub-contractor”.

14. Insurance

Such as the sub-contractor must maintain adequate insurance cover, and on request produce a certified copy of all related insurance policies.

15. Co-operation and reputation

This might include nominating a contract lead individual, and how often parties agree to meet. Also, agreeing that neither party will do anything to bring each others reputation into dispute. This section may also include restrictions on marketing materials during and after the agreement period.

16. Learners with Additional Support Requirements

This section might outline how the sub-contractor supplies the relevant additional support assessment form, and adheres to the Skills Funding Agency guidelines.

17. Termination

For example, stating that the lead Partner can terminate the agreement by written notice if there is a material breach and visa versa. This would also include how much notice is needed dependent on the circumstance.

18. Employer fees, taxation and other payments

Details of who collects the fees, who retains them and the tax implications.

19. Confidentiality

For example, a statement about how neither party will disclose the contents of the Agreement except, for example, if required as part of an audit.

20. Other ~ for example Force Majeure and jurisdiction.

Annex E: List of abbreviations

| | |
|-------|--|
| ACTOR | Approved College and Training Organisation Register |
| ACU | Area Cost Uplift |
| ALR | Adult Learner Responsive |
| ALP | Association of Learning Providers |
| BIS | Department for Business Innovation and Skills |
| DfE | Department for Education |
| DLF | Demand Led Funding |
| DSAT | Data Self-Assessment Toolkit |
| DU | Disadvantage Uplift |
| ECP | Employer Contribution Percentage |
| ER | Employer Responsive |
| FfE | Framework for Excellence |
| FLC | Foundation Learning Curriculum |
| GLH | Guided Learning Hour |
| ILR | Individualised Learner Record |
| IMUP | Identify and Manage Underperforming Provision |
| LAD | Learning Aim Database |
| LIS | Learner Information Suite |
| LRS | Learning Records Service |
| LSIS | Learning and Skills Improvement Service |
| MCL | Minimum Contract Level |
| MLP | Minimum Levels of Performance |
| NFR | National Funding Rate |
| OLDC | Online Data Collection portal |
| PLR | Personal Learning Record |
| POL | Provider Online |
| PWF | Programme Weighting Factor |
| QCF | Qualifications and Credit Framework |
| QPF | Qualified Provider Framework |
| RPL | Recognition of Prior Learning |
| SAMS | Single Account Management System |
| SASE | Specification of Apprenticeship Standard for England |
| SFA | Skills Funding Agency |
| SLN | Standard Learner Number |
| SME | Small or Medium Sized Enterprise |
| TtG | Train to Gain |
| UKRLP | UK Register of Learning Providers |
| YPLA | Young People's Learning Agency |

Minimum Contract Level (MCL)

72. In previous Guidance Notes the Agency has set out its intention to introduce a Minimum Contract Level. The threshold and application of this was considered as part of the consultation, *A Simplified FE and Skills Funding System and Methodology*. The introduction of a Minimum Contract Level will create efficiencies within the Agency and economies of scale across the sector.

73. The MCL threshold for 2011/12 has been set at **£500,000**. Any decision to increase the threshold in future years will be subject to an impact assessment of the introduction of MCL in 2011/12.

74. The MCL for 2011/12 will be applied on the basis of the total funding allocation made by the Agency for 2010/11, which included the following funding streams:

- Adult Learner Responsive
- Employer Responsive (including Train to Gain and Apprenticeships)
- European Social Funding (academic year proxy figure)
- Adult Safeguarded Learning including Family Learning Impact Fund and First Steps
- Discretionary Learner Support Funds

Please note that the Agency is currently in discussions with DfE about the application and impact of the MCL on 16-18 Apprenticeships. It is therefore not possible to confirm

if the policy will apply to those providers below the MCL threshold who deliver 16-18 Apprenticeships. We expect this to be clarified and the approach communicated in early January 2011.

75. The Minimum Contract Level will not take into account funds allocated in 10/11 for:

- the following Programmes for the Unemployed:
 - i. Employability Skills Programme
 - ii. Response to Redundancy
 - iii. 6 month offer
 - iv. Young Persons Guarantee – Routes into Work (including Care First Careers)
 - v. Young Persons Guarantee – Work Focused Training
- 16-18 Learner Responsive
- OLASS.

76. The MCL threshold will not take into account any in-year adjustment based on performance during 2010/11, nor will it take account of the application of Minimum Levels of Performance for 2011/12. Both of these factors will inform the final funding allocations for 2011/12, which will form the basis for MCL for 2012/13.

77. The following types of college/training organisation/employer will be exempt from the application of a Minimum Contract Level due to the specific nature of the contractual relationships that the Agency has with them:

- General FE colleges
- Specialist Colleges (e.g. of Art and Design)
- Large employers contracted to the National Employer Service
- Sixth Form Colleges (see below)
- Higher Education Institutions (see below).

78. Providers currently delivering only ESF activity which is due to end before 31 December 2011 are exempt from the application of MCL as they are already in the last year of their contract.

79. ESF only providers delivering Community Grants or 16-18 provision for those not in education, employment or training will be exempt from the application of a Minimum Contract Level due to the specific nature of the activity being delivered. However, the MCL will apply to the letting of ESF contracts for 19+ skills activity.

80. The Agency and the YPLA are currently considering the most efficient and effective way of managing Sixth Form College funding. This will include consideration of the impact of the Minimum Contract Level.

81. In addition, the Agency is also working with the Higher Education Funding Council for England to explore how to manage the funding of Higher Education Institutions (HEIs). Whilst the implications of this are being considered, MCL will not apply to HEIs.

82. The Learning and Skills Improvement Service is working with the sector to identify which delivery arrangements are being considered and will work with the Agency in order to understand how these different arrangements will be treated.

83. Further detailed guidance for providers can be found at Annex A to this Guidance Note and includes the process and timetable for 2012/13.

Sub-contracting

84. The Agency requirements for sub-contracting are set out in the Funding Requirements documents for 2010/11. It is likely that levels of sub-contracting will increase as a result of the introduction of MCL in 2011/12. The Agency is therefore working with the sector to develop further operational guidance and this will be published in early 2011.

Levels of sub-contracting

85. Currently sub-contractors may not further sub-contract provision except in exceptional circumstances, which include specialist provision for ESF and then only with the written approval of the Chief Executive of Skills Funding. This could affect some existing direct contractors who currently sub-contract, but then choose to enter a sub-contracting relationship themselves as a result of MCL. We are working with sector representatives to be clearer about what are considered to be exceptional circumstances for the 2011/12 requirements. This will be included in further operational requirements published in early 2011.

Administration fees

86. As part of their funding agreement with the Agency, lead contractors are required to submit details of their sub-contracting arrangements. These details should be submitted by returning the 'Declaration of Sub-contractors' spreadsheet, which is available from the [Skills Funding Agency website](#).

Details of how to submit this form are given on the spreadsheet and all providers should have already submitted a return for 2010/11.

87. In line with the Government's transparency agenda, the Agency will publish information on the administration fees of sub-contracted provision included in the 'Declaration of Sub-contractors', which the Agency plans to publish by 20 December. The information will be shared with providers prior to publication and will inform those organisations looking to become sub-contractors. It will also reflect the Coalition Government's commitment to transparency in showing the way public funding is used through sub-contracting relationships. While there is no defined limit on administration fees, the current requirements set an expectation that this should be proportionate to the costs incurred and would not normally exceed 15%.

Assurance of sub-contractors and use of ACTOR

88. It is the responsibility of the lead contractor to satisfy itself that the sub-contractor has been selected fairly and has the sufficient capacity, capability, quality and business standing to deliver the provision that is being sub-contracted. The current sub-contracting requirements are clear that colleges and publicly funded bodies must ensure they comply with relevant UK and European regulations when procuring the services of a sub-contractor. Although the regulations governing private providers are less prescriptive, the Agency will still expect the selection of sub-contractors to be equally fair, open and transparent.

89. How colleges and training organisations choose to meet these requirements and monitor them going forward is a matter for them to determine. However, the Chief Executive of Skills Funding reserves the right to ask lead contractors for additional evidence in support of their due diligence process. Colleges and training organisations that fail to oversee their sub-contractors appropriately will lose the right to sub-contract and may be suspended or removed from ACTOR themselves.
90. Colleges and training organisations intending to subcontract provision are encouraged to use the Agency's Approved College and Training Organisation Register (ACTOR). It can significantly simplify the process by which colleges and training organisations carry out due diligence checks of potential sub-contractors. The process for including organisations on ACTOR meets the requirements of the UK's procurement regulations and provides assurance that an organisation included on ACTOR has successfully passed a due diligence process and has had their capability to deliver the Agency's programmes assessed.
91. Colleges and training organisations remain responsible for checking the details provided by the successful sub-contractor and the Agency will not accept any liability in respect of the sub-contractor.

Intervention

92. The Skills Strategy sets out the intention to 'act decisively to tackle unacceptable performance'. Further policy announcements will be made in Spring 2011 and as part of this we will consult on a revised and streamlined policy for Statutory Intervention. Until the revised policy is published, the Learning and Skills Council's Statutory Intervention Policy published in October 2008 will be followed with all references to the Learning and Skills Council replaced by Chief Executive of Skills Funding.

Annex A - Minimum Contract Level

Additional Guidance for colleges, training organisations and employers

Implementation timetable and process

1. The MCL threshold will apply from the start of the 2011/12 academic year¹; the Agency will therefore cease to issue direct contracts to organisations for less than the Minimum Contract Level for 2011/12 (taking into account any exemptions).
2. Now that the Minimum Contract Level has been formally announced, the Agency is writing to all providers below the threshold (and that are not in one of the exemption categories) to confirm that it will cease to contract directly with them from August 2011. Providers should note that the position on 16-18 Apprenticeships is still being considered and it is therefore not possible to confirm whether the policy will apply to those providers delivering 16-18 Apprenticeships. It is hoped that this will be clarified and the approach communicated in early 2011. The letter will confirm the next steps and implementation process as per the table below:

| Date | Action |
|-------------------------------|---|
| September 2010 | 22/09/10 - Skills Funding Agency allocations published |
| October 2010 | 20/10/10 - Approved College and Training Organisation Register (ACTOR) opens for all existing contract holders to register |
| November 2010 | 16/11/10 - Minimum Contract Level announced Providers enter into discussions on alternative arrangements |
| | 30/11/10 - Account Teams write to those providers affected by the Minimum Contract Level |
| December 2010 | 15/12/10 - Indicative 2011/12 funding allocation issued to all providers whether above or below the Minimum Contract Level Providers begin to enter into new delivery arrangements if this is their preferred route Providers can notify the Agency at any point between December and the end of March of their final and formal course of action. 31/12/10 - First ACTOR freeze date |
| December to March 2011 | Continued dialogue between provider and account manager. New contract arrangements formed. |
| January 2011 | Minimum levels of performance (MLP) applied to all providers, taking into account exemptions and exceptions 11/01/11 Providers affected by the Minimum Contract Level give an initial indication to the Agency of their planned course of action: <ul style="list-style-type: none"> ○ new delivery arrangement being formed (sub-contract, consortia, merger/acquisition, new legal entity) ○ run-down contract |

¹ For new ESF contracts the threshold will apply from their date of issue.

| | |
|----------------------|--|
| | ACTOR reopens for the update of information on new contracting arrangements (e.g. new sub contractors) and registration of new lead providers. |
| February 2011 | MLP outcomes agreed |
| March 2011 | 31/03/11 - Final funding calculations issued to all providers. This will include an adjustment for MLP but will not reflect any changes arising from the formation of new delivery arrangements |
| | 31/03/11 - Providers affected by the Minimum Contract Level to give a final and formal notification to the Agency of their arrangements. New arrangements will need to have been submitted on ACTOR. Provider and contract lead confirm in writing to the Agency that they are working together. |
| | 31/03/11 - Second ACTOR freeze date: this is the freeze date that will include the evaluation of any new delivery arrangements that have been entered into. |
| April 2011 | Providers using ACTOR notified whether they have been successful |
| May 2011 | 31/05/11 - Allocations to lead providers adjusted to take account of new delivery arrangements that have been formed |
| June 2011 | 30/06/11 - Contracts and funding agreements issued to direct contractors for 2011/12 |
| July 2011 | 31/07/11 – Learners ILR data migrated to lead providers; contract novations completed. |

New delivery arrangements – responsibilities of providers

3. The Agency will not make any recommendations or provide any advice on new delivery arrangements that might be adopted by providers affected by the introduction of the Minimum Contract Level.
4. It is the responsibility of providers to migrate to new delivery arrangements if they wish to do so and it is the college's or training organisation's responsibility to undertake any necessary due diligence and to seek legal advice before entering into a relationship with another organisation.
5. In moving to new delivery arrangements, it is also the responsibility of providers to check whether there is the potential of a Transfer of Undertakings and Protection of Employment (TUPE) transfer. The employees of the outgoing organisation or the management of the incoming organisation must seek their own counsel on this issue.

New delivery arrangements – processes to be followed

6. The Agency has previously required providers to deliver at least half of the value of their contract directly. This restriction was to ensure that the nature of the service did not change and therefore alter the procurement procedures that would need to have been followed. Our latest legal advice is that the delivery model adopted by the provider does not alter the nature of the service that is being procured. Therefore, provided that contracts are limited to providing educational and vocational training services, the proposed delivery model or the total proportion of provision to be sub-contracted does not matter.

7. This means that the Agency will no longer place any restrictions on the type of delivery model a provider is required to have. The Agency will need to evaluate each proposal on the basis of value for money, risk capacity, capability and resource to deliver and the Minimum Contract Level.
8. For any new legal entity created as a result of existing providers entering into collaborative arrangements the Agency will need to be assured that it is able to meet the existing and future liabilities and commitments of the provision it is taking responsibility for. This assessment will be undertaken through ACTOR and Provider Financial Assurance assessments. Through these assessments the Agency will need to be satisfied that the new legal entity has robust and legally binding guarantees in place with its shareholders / partners / sub-contractors that will ensure that public money is safe guarded.
9. Where a provider impacted by MCL forms a new contracting arrangement, be this through a new sub-contracting relationship or a new collaborative arrangement between providers the following general actions and principles apply:
 - The providers forming new arrangements will need to be existing Agency contractors and approved on ACTOR
 - Where an existing provider is taking on new sub-contractors, the lead provider must be an existing Agency direct contractor and already approved on ACTOR
 - Where a new legal entity is being created to hold the contract, and therefore sub contract to a group of existing providers, it must become approved on ACTOR
 - The lead provider must have a legally binding agreement with each and all of its sub-contractors
 - The lead provider will determine the proportion of provision they wish to sub-contract (lead provider can choose to sub-contract 100% of the provision if they wish to do so)
 - The level of allocation given to a sub-contractor is a matter between the lead provider and sub contractor(s)
 - Once the new arrangement is formed, the Agency will only deal with the lead provider
 - If a disagreement arises between the lead provider and the sub-contractor, the Agency will not intervene
 - The lead provider retains ultimate responsibility for all aspects of the provision that it is contracted to deliver, including elements that it chooses to sub-contract
 - The sub-contractor cannot 'port' their share of provision to another lead provider at some point in the future as this belongs to the lead provider.

Approved College and Training Organisation Register (ACTOR)

10. As noted above all providers wishing to hold contracts with the Agency must be approved on ACTOR and to this end the initial registration process for ACTOR is currently ongoing, with a closing deadline of 31 December 2010, for all existing providers.

Run-down allocations and contracts

11. It will be necessary to issue run-down contracts to those providers that choose to exit from Agency delivery, either in year or at the start of 2011/12, and also to those that fail to enter new delivery arrangements. Run-down allocations will be calculated on the

basis of a consistent national formula which will utilise the calculations within the Provider Financial Report.

12. Run-down allocations will only be calculated when a provider notifies the Agency of the decision to wind up their contract. In order to make the calculation, a clear understanding of the current level of activity will need to be provided.

Contract termination

13. Where a provider chooses to terminate their contract with the Agency, the provider is required to give due notice, as per the terms and conditions of their contract and is expected to see out this notice period.
14. In the interests of learners and employers, we expect providers to notify the Agency at the earliest possible opportunity if this is their preferred course of action so that alternative provision can be sourced.
15. The Agency will issue providers with clear guidance on the actions it needs to take in order that learners can be transferred to another provider(s).
16. Where such learners are taken on by another provider the funding required to meet their training commitment will also be transferred to that provider.

Providers currently in consortia wishing to be direct contractors

17. As this type of provider does not have a direct contract with the Agency, they will be treated as any other sub-contractor (i.e. not offered a direct contract even if what they deliver is above the Minimum Contract Level).
18. However any provider may apply to become approved on ACTOR and access new funding opportunities through that route.

Application of Minimum Levels of Performance

19. Minimum Levels of Performance in 2011/12 will be based on 2010/11 delivery. When contracts novate/ transfer, the lead provider/direct contractor assumes responsibility for MLP of all sub-contractors/consortia members and as such the MLP will be the collective MLP of all provision delivered through the contract.
20. The same process will apply where a new legal entity or holding company is created. The provision delivered by such a contract holder will not be classified as immature as the provision will have a history of delivery, albeit with a different contract holder.

Process and timetable for providers looking to make arrangements for 2012/13 and beyond

21. Providers currently above the threshold are free to enter into arrangements as they see fit and should consider the implications and ambitions of both the Comprehensive Spending Review and the Skills Strategy on their future activity and allocations rather than await any change in the threshold.
22. As has been stated previously no commitment has been made to increase the MCL threshold until after the impact of its initial introduction has been assessed. However this does not mean that it will not rise in future years. Should the decision be made to

raise the threshold all providers will be given adequate notification.

23. As part of the allocations process for each academic year from 2012/13 onwards, an assessment will be made as to whether the threshold should be raised and whether any providers have fallen below the MCL threshold to be implemented.
24. Regardless of whether the threshold rises or not in any future year MCL will apply with regard to a provider's allocation for the previous year.

Role of the Agency once new delivery arrangements are in place

25. All contract holders will fall under the relevant performance management processes for 2011/12.
26. The Agency will maintain a one-to-one relationship with the providers with whom it holds contracts as is the case with the account management structure currently.
27. Where new contracting arrangements exist, be that increased sub-contracting or with a new legal entity, the Agency will take a risk based approach to the level of monitoring required to safeguard public funding. This may include closer monitoring, audit or inspection as appropriate to the level of funding and measured risk.

Further support and guidance

28. Account Managers will be working with all those providers impacted by MCL in order to understand the arrangements that they are considering and ultimately entering into.
29. Whilst the Agency is keen to maintain a close dialogue with providers throughout this process it will not be able to give advice on preferred arrangements. Independent guidance and advice is available:
- The Learning and Skills Improvement Service (LSIS) are putting in place a support programme for providers impacted by MCL including a series of fact sheets on provider contracting models. More information on this programme can be found via the [LSIS website](#)

Queries and complaints

30. Any queries should be directed to your Account Manager in the first instance.
31. The Agency will not operate a business case or appeals process for providers to challenge the application of the policy. Complaints should be raised through the normal Agency complaints procedure. Details of the complaints procedure are available on the [Skills Funding Agency website](#).

Frequently asked questions

32. A set of FAQs have been published following the MCL seminars delivered by ALP during October 2010. The latest FAQ can be accessed through the [ALP website](#).